



## INFORMATION NOTE

**DATE:** November 30, 2020

**TO:** Grand Chiefs and Chiefs

**C.C.:** Health and Social Services Directors  
General Directors

**FROM:** First Nations of Quebec and Labrador Health and Social Services Commission (FNQLHSSC)

**SUBJECT:** 1. **Federal Government Announcement** of funding to advance the co-development of the implementation of the *Act concerning First Nations, Inuit and Métis children, youth and families (C-92)*.

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2. **Models for providing notice** of exercise of legislative authority under the Act

### Background

On January 1, 2020, *An Act respecting First Nations, Inuit and Métis children, youth and families* came into force. It affirms the inherent jurisdiction of First Nations authorities over child and family services, particularly in terms of youth protection.

This Act also dictates principles that apply nationally, such as the best interests of the child, the priority given to preventive care, and the order of priority for child placement. These principles prevail over the provisions of the *Youth Protection Act (YPA)* in the event of any legislative incoherence or incompatibility.

### Federal Government Announcement

In response to requests raised by First Nations, Inuit and Métis since the Act was drafted, the Prime Minister, Justin Trudeau, [last Friday announced](#) over \$542 million in funding to advance First Nations, Inuit, and Métis engagement to co-develop the implementation of the Act, and to assist Indigenous communities and groups in building the capacity to establish their own child and family services systems.

This investment over five years, includes:

- \$425 million over five years for capacity-building funding for Indigenous jurisdictions.
- Nearly \$73 million over five years for coordination agreement discussions.
- Over \$35 million for internal services.
- Nearly \$10 million over two years for governance engagement mechanisms.

## Current situation

To date, more than 65 communities and organizations across the country have already given notice of their intention to develop and implement their own law in this area. Among these are the community of Opiticiwan and the Makivik Corporation.

Despite the reference to the Court of Appeal relating to the constitutionality of the *Act respecting First Nations, Inuit and Métis children, youth and families* by the Government of Quebec, it is essential that the communities be able to have access to resources needed to develop and implement their own governance models.

## Models\* for giving notice

In order to better support you in your reflection, you will find attached **models\*** developed by the FNQLHSSC for community governing authorities who are interested in giving notice regarding exercising their legislative authority, thus giving their law the force of federal law. By proceeding in this way, the provisions of the First Nation law would take precedence over conflicting provisions of provincial laws. These models will be also be presented at the next Regional Round Table meeting. Note that you are not required to use the suggested models, and that you can develop your own notices.

## Exercise of legislative authority and coordination agreement

Section 20(1) of the federal Act provides that First Nations may send two types of notices to the federal and provincial governments regarding the exercise of their legislative authority (development of their own laws) with regard to child and family services:

Notice – Notice to the Minister of Indigenous Services and relevant provincial government(s)<sup>1</sup> s. 20(1) of the First Nation's intention to exercise legislative authority;

Notice – Requests to the Minister of Indigenous Services and the government of the relevant s. 20(2) province(s) to enter into a coordination agreement regarding the exercise of legislative authority by the First Nation in areas such as emergency services, support measures, fiscal arrangements and other coordination measures. Reaching such an agreement (or a year of reasonable effort to do so) ensures that the provisions of an Indigenous law takes precedence over the conflicting provisions of provincial laws.

Under sections 20(1) and 20(2) of the federal Act, a First Nation government can therefore give notice of its intention to exercise its legislative authority and, if applicable, of its intention to enter into a coordination agreement. In practice, at least three options are available to First Nations for the implementation of this new regime:

- 1) Give **only** notice of intention to exercise legislative authority under section 20(1) (see appendix 1);

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<sup>1</sup> Note: this reference also includes the territories (Nunavut, Northwest Territories, Yukon). See *Interpretation Act*, R.S.C. (1985), c. I-21, s. 35, “province”.

- 2) Give notice of intention to exercise legislative authority under section 20(1) **and subsequently** give notice to request the negotiation of a coordination agreement under subsection 20(2) (see appendices 1 and 2); or
- 3) Give notice of intention to exercise legislative authority under section 20(1) and, **at the same time**, give notice to request the negotiation of a coordination agreement under subsection 20(2) (see appendix 3).

**The FNQLHSSC strongly recommends that all First Nations provide notice of intent to exercise legislative authority and, if desired, notice to request to enter a coordination agreement.** Notices will be interpreted as support for the federal Act in light of the Quebec Court of Appeal challenge. In the case of the request to enter a coordination agreement, the notice will start the clock on the one-year period for a First Nation law to acquire the force of federal law.

Here is some additional information to help you determine your approach for sending notices:

- When giving notice of intention to exercise legislative authority under section 20(1), it is not necessary to have already drafted your law, either in whole or in part.
- The law of a First Nation can take effect upon its adoption, even if the First Nation does not have a coordination agreement with the federal government and the provincial government(s) or if the one-year period has not yet been reached.
- The coordination agreement does not need to be concluded in order to provide notice under section 20(1) and for the exercise of legislative authority. This is neither a delegation of powers nor a self-government agreement. The notice simply aims to coordinate certain aspects of child and family services between governments.<sup>2</sup>

### **Identification of the “Indigenous governing body”**

For the purposes of exercising legislative authority and negotiating a coordination agreement with provincial and federal governments, the federal Act refers to the “**Indigenous Governing Body (IGB)**”.<sup>3</sup>

While the identification of the IGB rests with the First Nation, the IGB is normally the First Nation council or government. However, this does not prevent the IGB from appointing the entity or service that it deems appropriate in accordance with its own realities to take on child and family services on a day-to-day basis.

The IGB has the right to be informed **of any significant measure taken with regard to the child**, including removal from their family environment by the Director of Youth Protection (DYP), and it can also carry out representations in the context of legal proceedings concerning the child in accordance with sections 12 and 13 of the federal Act (see appendix 4 and 5). The FNQLHSSC strongly recommends that all First Nations notify the Quebec government about the designation of its IGB in

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<sup>2</sup> For examples of coordination measures, see: M.E. Turpel-Lafond, AFN. “Primer on Practice Shifts Required With Canada’s *Act Respecting First Nations, Inuit and Métis Children, Youth and Families*” (2019), p. 8 ([https://www.afn.ca/wp-content/uploads/2020/01/Policy\\_Primer\\_Report\\_ENG.pdf](https://www.afn.ca/wp-content/uploads/2020/01/Policy_Primer_Report_ENG.pdf)).

<sup>3</sup> Definition of section 1 of the Act: “(...) council, government or other entity that is authorized to act on behalf of an Indigenous group, community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982 (corps dirigeant autochtone)*”.

order to send a message about the importance of respecting the Act and to ensure that the rights of notice and to make representations in court proceedings are respected.

For more information, please contact Leila Ben Messaoud, Legal Advisor, Special Projects, at [lbmouellet@cssspnql.com](mailto:lbmouellet@cssspnql.com).

We thank you in advance for your usual cooperation and rest assured that we will keep you informed of any developments in this important file.

**Attachments      Models for giving notice\***

*\*The notice templates were developed by the FNQLHSSC and disseminated on November 30, 2020, in order to support the reflections of the First Nations in Quebec and to be used as tools by them, if necessary. These templates are now being shared for reference purposes only; the FNQLHSSC refuses any liability that may result from their use. These notice templates do not provide legal advice. If necessary, we suggest that First Nations governments obtain the legal support they deem necessary.*