

First Nations Laws Respecting Child and Family Welfare: A Comparative Analysis



Comparative Analysis of Indigenous Laws Respecting Child and Family Services

Current to
November 2023

CONTENTS

Executive Summary	2
Indigenous Laws Reviewed in this Document	2
Elements Chosen for Comparison	4
1. Use of Culture – how is culture used/featured?	5
2. Single/centralized vs mixed – to what extent is the nation going to move as an island vs building a system with others/in coordination with other agencies and communities?	7
3. Application – who does the law apply to and where? does the law distinguish between ordinarily resident on/off reserve? how does the law treat non-Indigenous persons living on- reserve? how does the law deal with mixed families, or a person affiliated/tied to the nation but not a registered member?	8
4. Conflict of Indigenous Laws – how does the law deal with children who have citizenship with more than one Indigenous communities?	12
5. Chief and Council – how does the law delineate roles, responsibilities, and decision-making authorities as between the First Nation government and the agency(ies)?	13
6. Decision-making process – how are decisions made with respect to children and families?	16
7. Appeals – does the law provide an internal mechanism for a child/family to appeal a decision? Are decisions made under the law subject to review or appeal by court?	20
General	20
Internal Appeals	20
External Appeals	21
8. Children’s Advocate – does the law provide for an advocate, band reps, other third/independent parties (i.e., someone other than the service provider) to protect the interests of children and families?	22
9. Managing risks & assessments – What are Indigenous law-makers doing differently vis-à-vis risk, parental removal, prevention, residential care?	24
Differently in prevention and protection?	24
10. Custom Adoption	26
11. Investigate and removal power – what powers are given to the agency?	27
12. Supports for youth – what supports are available to youth, including youth with dependents, under the law? for how long/on what conditions are these supports available?	29
13. Children’s residences – what does the law say about how homes for children are to be regulated or overseen?	30
Other Observations About Indigenous Laws re Child and Family Services	32

Executive Summary

The Chiefs of Ontario recognizes the hard work and expertise of Sinéad Dearman and Maggie Wente of Olthuis Kleer Townshend LLP in the development of this document.

This comparative analysis of Indigenous laws respecting child and family services is part of a broader educational and information sharing project carried out by the Chiefs of Ontario Justice Sector: the First Nations Law Development Project. In response to *An Act respecting First Nations, Inuit and Métis children, youth and families*, also known as Bill C-92, which came into effect on January 1, 2020, this project focuses on creating and disseminating educational and cultural resources to support First Nations as they exercise their inherent jurisdiction over their child welfare processes.

In March 2023, the Chiefs of Ontario Justice Sector disseminated the [Child and Family Well-Being Law Making Resource Bundle](#). This Bundle was developed to support and enhance First Nations' capacity in exercising their jurisdiction over child welfare by:

- Providing foundational and user-friendly information about the current context of First Nations child welfare;
- Demystifying complex legal jargon and concepts;
- Providing tips and tools to support Nations in exercising jurisdiction on child welfare;
- Providing useful real-world examples of First Nations jurisdiction of child welfare in action;
- Collecting and presenting links to other tools and relevant information.

Building on this previous resource bundle, the Chiefs of Ontario Justice Sector is pleased to launch this *Comparative Analysis of Indigenous Laws respecting Child and Family Services*. Developed by Olthuis Kleer Townshend LLP, this analysis uses thirteen different elements to compare and contrast fifteen current Indigenous laws covering child and family welfare. The purpose of this document is to provide First Nations with an educational resource to support the process of exercising inherent jurisdiction over child and family welfare. This resource will provide an overview of the scope of Indigenous laws on the topic and provides pertinent information on what may be included in a First Nation's child and family welfare law.

Indigenous Laws Reviewed in this Document

- Anishinabek Nation, [Anishinabek Nation Child Well-Being Law](#), Ontario, 2020
- Atikamekw d'Opitciwan, [Loi de la protection sociale Atikamekw d'Opitciwan](#), Quebec, 2022
- Atikamekw Sipi (Nation), Atikamekw Authority Intervention System, Quebec, approx. 2000
– not online

- Carcross Tagish First Nation, *Carcross Tagish First Nation Family Act*, Yukon, 2010 – **not in force**
- Cowessess First Nation, *Miyo Pimatisowin Act*, Saskatchewan, 2021
- Cowichan Tribes, *Snuw'uy'ulhtst tu Quw'utsun Mutsimuhw u' Shhw'a'luqwa'a' i' Smun'eem/Laws of the Cowichan People for Families and Children*, BC, 2023 – **not in force**
- Grand Council Treaty #3, *Abinooji Inakonigewin*, Ontario, 2005
- Inuvialuit Regional Corporation, *Inuvialuit Qitunrariit Inuuniarnikkun Maliqaksat*, Northwest Territories/Yukon, 2021 – **not in force**
- Kitchenuhmaykoosib Inninuwug, *Kitchenuhmaykoosib Inninuwug Dibenjikewin Onaakonikewin*, Ontario, 2019
- Loon River First Nation, Lubicon Lake Band #453, and Peerless Trout First Nation, *Awaśak Wiyasewêwin*, Alberta, 2023
- Louis Bull Tribe, *Asikiw Mostos O'pikinawasiwin Society Law*, Alberta, 2022
- Peguis First Nation, *Honouring our Children, Families and Nation Act*, Manitoba, 2022
- Spallumcheen Indian Band/Splatsin First Nation, *Bylaw-No.-3-Re-Care-of- Our-Indian-Children*, BC, 1980
- Sts'ailes First Nation, *Snowoyelh te Emi:melh te Sts'ailes*, BC, 2023
- Wabaseemoong Independent Nations, *Wabaseemoong Independent Nations Customary Care Code*, Ontario, 2017

Other Indigenous CFS Laws

In addition, we are aware of two Indigenous CFS law that are not available online and are not presently in force:

- Neqotkuk/Tobique First Nation, *Neqotkuk Child and Family Well-Being Act*, New Brunswick
- Taykwa Tagamou Nation, *Child Wellbeing Law*, Ontario, 2022



Elements Chosen for Comparison

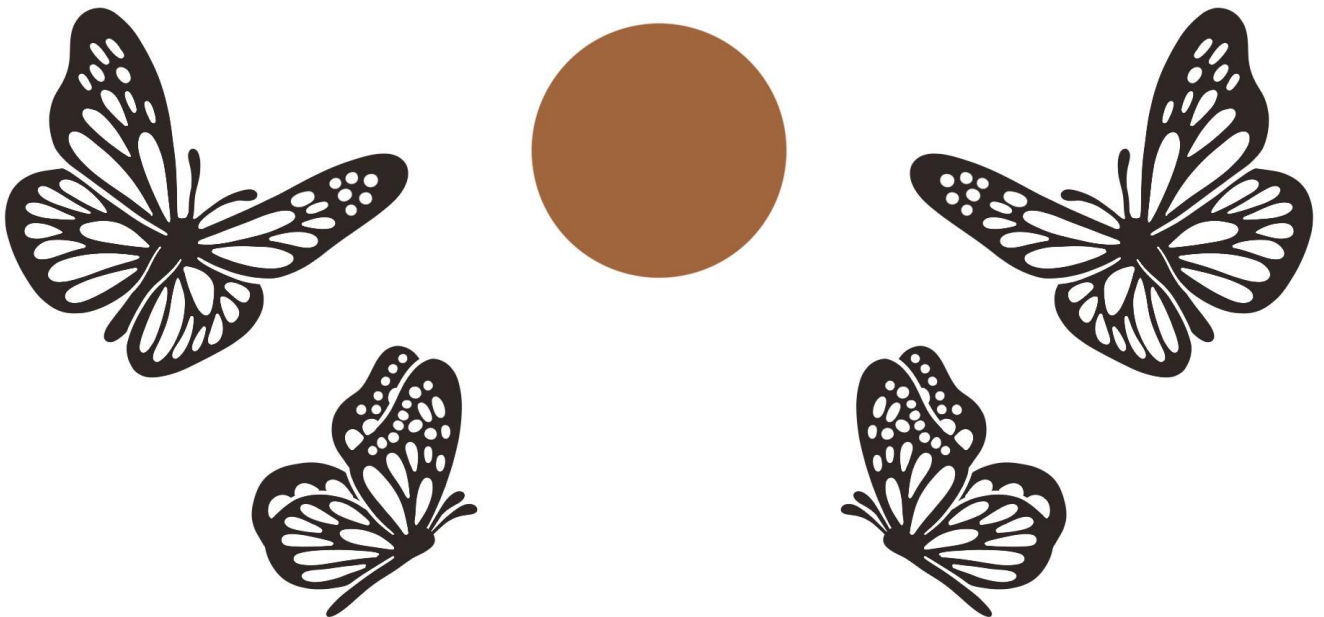
This document summarizes the following 13 elements across the Indigenous laws respecting child and family services that were reviewed:

1. Use of culture – how is culture used/featured?
2. Single/centralized vs mixed – to what extent is the nation going to move as an island vs building a system with others/in coordination with other agencies and communities?
3. Application – who does the law apply to and where? does the law distinguish between ordinarily resident on/off reserve? how does the law treat non-Indigenous persons living on-reserve? how does the law deal with mixed families, or a person affiliated/tied to the nation but not a registered member?
4. Conflict of Indigenous Laws – how does the law deal with children who have citizenship with more than one Indigenous community?
5. Chief and Council – how does the law delineate roles, responsibilities, and decision-making authorities as between the First Nation government and the agency(ies)?
6. Decision-making process – how are decisions made with respect to children and families?
7. Appeals – does the law provide an internal mechanism for a child/family to appeal a decision? are decisions made under the law subject to review or appeal by court?
8. Children's Advocate – does the law provide for an advocate, band reps, other third/independent parties (i.e., someone other than the service provider) to protect the interests of children and families?
9. Managing risks & assessments – What are Indigenous law-makers doing differently vis-à-vis risk, parental removal, prevention, residential care?
10. Custom Adoption – does the law provide for custom adoption?
11. Investigative and removal powers – what powers are given to the agency?
12. Supports for youth – what supports are available to youth, including youth with dependents, under the law? for how long/on what conditions are these supports available?
13. Regulation of children's residences – what does the law say about how homes for children are to be regulated or overseen?

1. Use of Culture – how is culture used/featured?

- **Anishinabek Nation** – The Jurisdiction section features almost exclusively Anishinaabe language.
- **Atikamekw d’Opticiwan** – Uses a model that involves elders, Atikamekw concepts of guardianship and adoption, places high value on culture and defines cultural continuity.
- **Atikamekw Nation** – The service delivery model is focused on keeping children connected with their culture and language.
- **Carcross Tagish** – Features “Our Belief” sections under key provisions that explain (i) the First Nation’s beliefs/principles that relate to that provision and (ii) how those beliefs/principles are reflected in the provision.
- **Cowessess** – No substantial content on culture. The law adopts the text re cultural continuity from the Federal Act (s.6.3).
- **Cowichan** – Culture is a significant part of this law and is woven throughout all sections. The law begins with a prayer/recitation in Hul’qumi’num. The law emphasizes the interconnection between culture and law, for example, the preamble to the law states “kinship is a foundational legal principle of our *Snuw’uy’ulh*”, the Guiding Principles of the law also use *Snuw’uy’ulh* and provide detailed descriptions of what the teachings mean in English. Hul’qumi’num is used extensively throughout the law. The law reiterates throughout that decisions are to be made in a manner that recognizes and respects Cowichan Tribes culture.
- **Grand Council Treaty #3** – Preamble contains several references to Traditional Anishinaabe legal principles. Law also states that it should be interpreted as consistent with traditional Anishinaabe law and features some Anishinaabemowin words throughout (Part 1, s. 2).
- **Inuvialuit** – Preamble to the law translates each English sentence into 3 different Inuit dialects.
- **Kitchenuhmaykoosib Inninuwig** – Law uses the Oji-Cree language heavily; almost all defined terms are in Oji-Cree.
- **Loon River, Lubicon Lake, Peerless Trout** – not a significant part of the law, but there is a section on maintaining a child’s cultural continuity (s. 6.3).

- **Louis Bull** – Law starts with a beautiful declaration in Cree on 4 sacred laws. Culture is woven throughout the law, e.g., “traditions, culture, values and language are included within the concept of the “best interests of the Awasisahk...” (Section 5, subsection 1(15)).
- **Peguis** – Specifies unique rights of Anishinaabe children, in Anishinaabemowin. Contains terms on cultural continuity (s. 6.3).
- **Splatsin** – Full translation of law in right-hand column into their language.
- **Sts’ailes** – Law to be administered in accordance with principles that include the Sts’ailes cultural values (s. 4.1). Acknowledgement that cultural values and practices must be respected in determinations around a child, youth and young adult’s safety (s. 4.1 (g)(i)).
- **Wabaseemoong** – Culture is integral to this law and woven throughout. E.g., Preservation of the child’s identity, clan membership, language, beliefs, and values are to guide decisions made under the law.



2. Single/centralized vs mixed – to what extent is the nation going to move as an island vs building a system with others/in coordination with other agencies and communities?

Single Community – Community/Nation is moving as an island, enacting a law applicable only to its Nation.

Mixed/ Group – The law is the foundation of a multi-community system.

	Single Community	Mixed/Group
Anishinabek Nation		✓
Atikamekw d'Opticiwan	✓	
Atikamekw Nation		✓
Carcross Tagish	✓	
Cowessess	✓	
Cowichan	✓	
Grand Council Treaty # 3		✓
Inuvialuit		✓
Kitchenuhmaykoosib Inninuwug	✓	
Loon River, Lubicon Lake, Peerless Trout		✓
Louis Bull	✓	
Peguis	✓	
Splatsin	✓	
Sts'ailes	✓	
Wabaseemoong	✓	



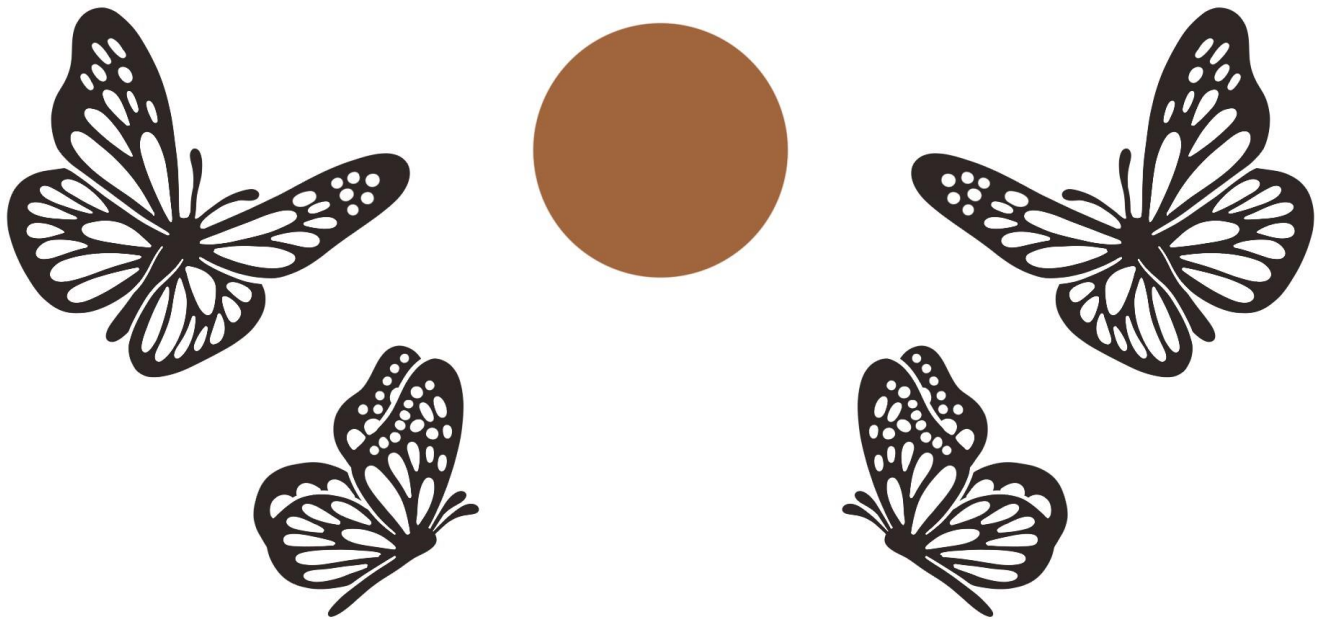
3. Application – who does the law apply to and where? does the law distinguish between ordinarily resident on/off reserve? how does the law treat non-Indigenous persons living on- reserve? how does the law deal with mixed families, or a person affiliated/tied to the nation but not a registered member?

- **Anishinabek Nation** – S. 4 states that AN has inherent jurisdiction over its children, regardless of residency.
- **Atikamekw d’Opticiwan** – S. 4 states that the law applies to children who are members of the Atikamekw community of Opitciwan, whether they live in or outside of the community.
- **Atikamekw Nation** – Service delivery available to children in Atikamekw communities of Wemotaci, Manawan, La Tuque, and La Bostonnais. Unclear if it applies off-reserve, and does not specify how to determine if a child is a member of these communities.
- **Carcross Tagish** – Law applies to all CTFN members and to natural or adopted children of those members. The law says CTFN will try to secure jurisdiction over a child residing outside of the community and provides that Council may extend the application of the law to include any child even if the child is not a citizen (sections 2.2, 2.3, 2.4).
- **Cowessess** – This law applies to all citizens and their children, whether they are residing on-or-off-reserve, and may apply to all other persons residing on-reserve pursuant to a coordination agreement (s. 4.4).
- **Cowichan** – This law applies within the service delivery area, which may be modified by regulation. Outside of the service delivery area, the Council may enter into any agreement they deem necessary to facilitate the involvement of the Cowichan Tribes’ Child and Family Services Authority (ss. 9.6, 9.7, 9.11). Unclear whether law applies off-reserve. Definition of child and citizen under the law is someone who is registered or entitled to be registered under the Cowichan Tribes’ Citizenship Code (s. 1.7(l) and s. 1.7 (mm)).
- **Grand Council Treaty #3** – This law applies to children of citizens of the nation “who ha[ve] had the opportunity to grow up as a citizen and includes an adoptive child.” The

law makes no distinction between on-and-off-reserve citizens (see Part 1, s. 3 for definition of child).

- **Inuvialuit** – Part 3 provides that this law applies within and beyond the Inuvialuit Settlement Region throughout Canada and outside Canada to the greatest possible extent. This law applies to every CFS or related matter involving a child (0-18) or youth (18-29) who is registered or reasonably believed to be eligible to be registered to become a beneficiary of the Inuvialuit Final Agreement.
- **Kitchenuhmaykoosib Inninuwug** – This law applies any person who is a member or is entitled to be a member of KI regardless of residence but does not apply to citizens of other First Nations (s. 3.3.).
- **Loon River, Lubicon Lake, Peerless Trout** – This law applies to a) all members (registered Band Members) of the founding First Nations and their children, on-or-off-reserve; b) other people residing on-reserve if provided for in a coordination agreement; c) other Indigenous communities if they form an agreement with the founding First Nations (s.4.5).
- **Louis Bull** – Section 3.2 states that Louis Bull Tribe has inherent jurisdiction over its children and youth, regardless of residency.
- **Peguis** – This law applies to all of its members and their members' children, youth, and family, regardless of residency (s. 4.3).
- **Splatsin** – This law applies to any child custody proceeding for an Indian child (defined as a band member under the age of 21 years and unmarried) regardless of the residence of the child (s. 3(a)).
- **Sts'ailes** – This law applies to any Sts'ailes child, youth or young adult residing in the Sts'ailes community who does not have active involvement with the Ministry Director or who does have active involvement provided the Ministry Director and Snowoyelh Department have agreed in writing to a transition plan for that individual (s. 6.2 (a)(b)). The law applies to the family of a child, youth or young adult referred to above (s. 6.2(c)). As of April 1, 2023, the Law applies to any non-Sts'ailes children and families where Sts'ailes and another Child and Family Service Provider agree in writing that the Snowoyelh Department will provide agreed upon CFS services (s. 6.3). Law applies to any Sts'ailes child, youth or young adult and their family whether the live in the community or elsewhere in British Columbia (s. 6.4).

- **Wabaseemoong** – This law applies to “all Band Members, Residents and Community Members who are residing in the communities of One Man Lake, Swan Lake, Wabaseemoong or any other Lands acquired hereafter” (Part I, Jurisdiction). (In practice, the WIN law applies to individuals who are not on the Band list and do not reside on-reserve but are tied to WIN and recognized as affiliated or descended from WIN by Elders).

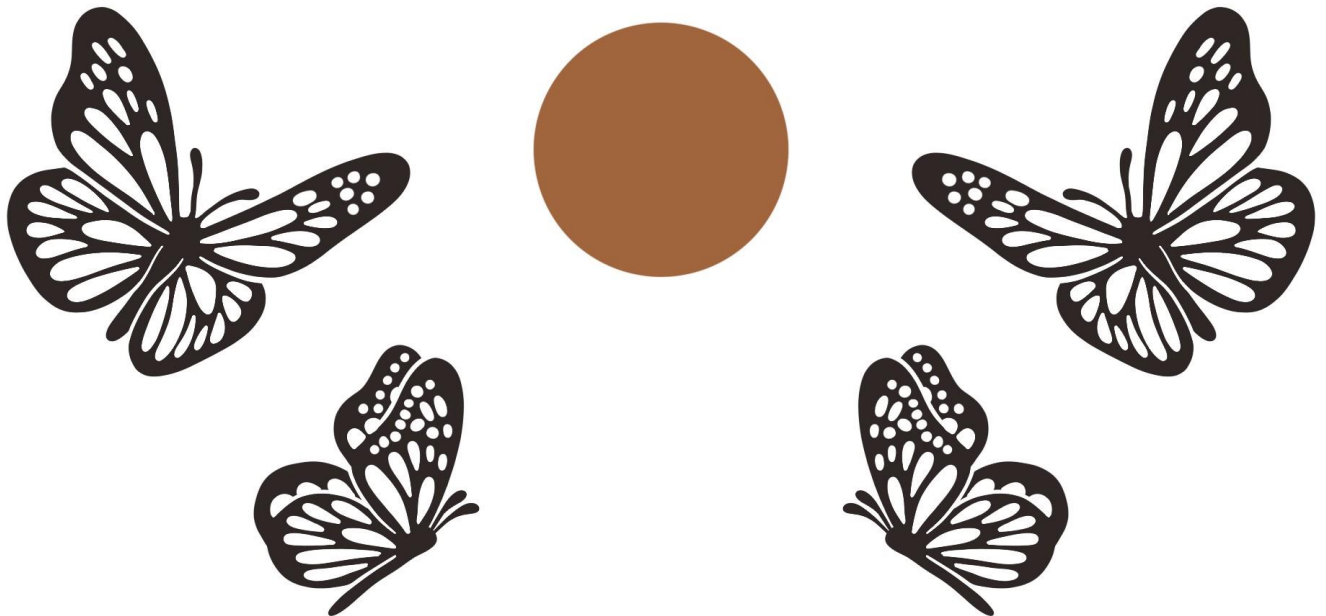


	Child band members (reg'd or eligible to be reg'd)/ citizens of the Nation	Children of band members/citizens of the Nation	Child band members resident outside the community/ off-reserve	Non-Indigenous peoples living on-reserve
Anishinabek Nation	✓		✓	
Atikamekw d'Opticiwan	✓		✓	
Atikamekw Nation	Not clear from law	Not clear from law	Not clear from law	Not clear from law
Carcross Tagish	✓	✓	✓	✓
Cowessess	✓	✓	✓	✓
Cowichan	✓		✓	
Grand Council Treaty #3	✓	✓	✓	
Inuvialuit	✓		✓	
Kitchenuhmaykoosib Inninuwig	✓		✓	
Loon River, Lubicon Lake, Peerless Trout	✓	✓	✓	If provided for in a Coordination Agreement
Louis Bull	✓		✓	
Peguis	✓	✓	✓	
Splatsin	✓		✓	
Sts'ailes	✓	✓		
Wabaseemoong	✓	✓	✓ (law is silent, but is Wabaseemoong's practice)	✓



4. Conflict of Indigenous Laws – how does the law deal with children who have citizenship with more than one Indigenous communities?

- One approach taken in Indigenous CFS laws is to provide that the law is paramount/prevails over the law of another First Nation.
 - Examples: Louis Bull (section 3.4) and Carcross Tagish (see s. 2.1).
- Another approach taken is to provide that if the child/youth belongs to or is connected to another Indigenous nation, the law-making community will consult with the other nation, explore their views and any applicable laws they have, and give them an opportunity to participate in the planning for/care of the child or youth.
 - Examples: Cowichan (s. 3.17), KI (s. 3.3.5), Inuvialuit (Part 11, s. 69), Sts'ailes (s. 17.2).
- Some of the laws are silent on the issue.
 - Examples: Splatshin; Grand Council Treaty # 3; Wabaseemoong; Cowessess; Anishinabek Nation; Atikamekw Nation; Atikamekw d'Opitciwan; Loon River, Lubicon Lake, and Peerless Trout; and Peguis.



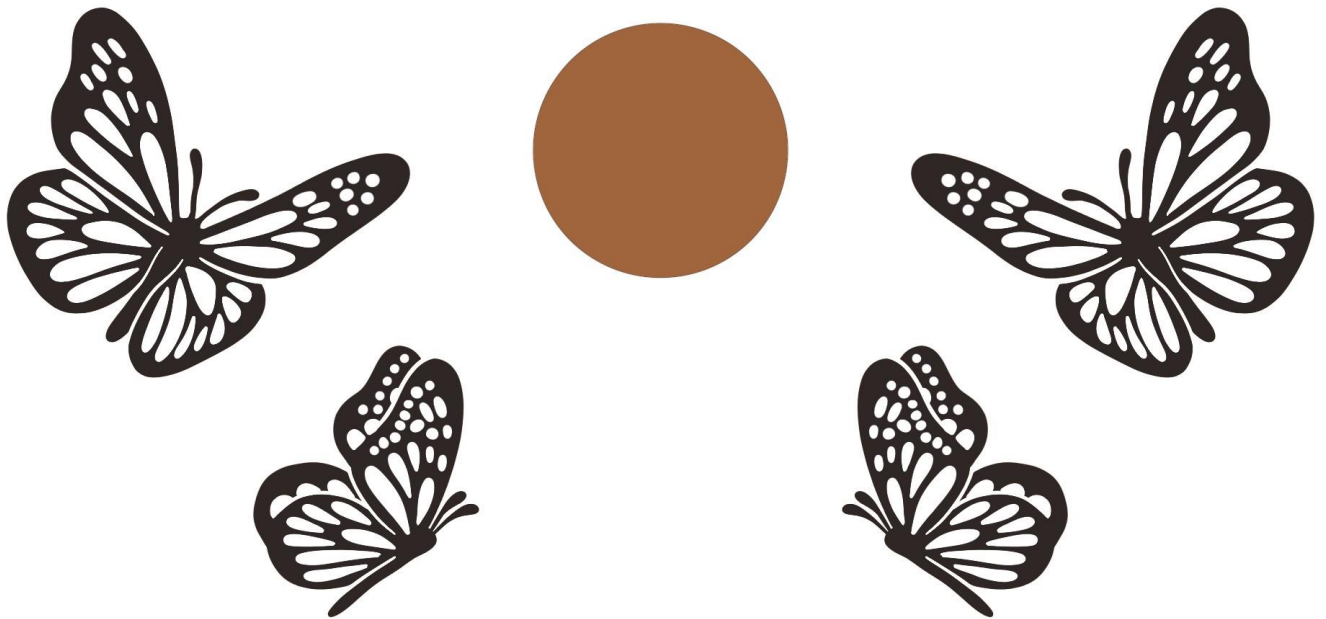
5. Chief and Council – how does the law delineate roles, responsibilities, and decision-making authorities as between the First Nation government and the agency(ies)?

- **Anishinabek Nation** – Chief and Council’s role limited to governance and law-making authority over child well- being (s. 48).
- **Atikamekw d’Opticiwan** – The Chief or the designed councilor of social services sits on the committee that selects the arbitrator and the Elders that constitute the arbitration council. The Chief and Council delegate authority to various persons. There are restrictions in the law which specifically prohibit the Council from interfering in placement decisions or acting as the Director of Social Protection. Specifically provides for independence of the various actors in the system.
- **Atikamekw Nation** – Not specified in the law.
- **Carcross Tagish** – Not specified in the law.
- **Cowessess** – Board of Governors of Agency are appointed by resolution of the Council, of whom one must be a Council member (s. 5.7).
- **Cowichan** – Cowichan Tribes act through Council when carrying out duties and functions (s. 9.12). The Council establishes laws and regulations, leads governmental relations and negotiations, appoints the Board of Directors of the Agency, the Independent Representative, and delegates authority to any person or class of person exercising powers, duties and functions under the Law (s. 9.13). Council may make the regulations necessary for the purposes under the Law (s. 9.15).
- **Grand Council Treaty #3** – Grand Council Treaty # 3 Ogichidaa/Grand Chief appoints the Ka Niigaanibowe’t, subject to ratification by the National Assembly (Part 3, ss. 21 and 25). Ka Niigaanibowe’t constitutes (and can reconstitute at its discretion) the agency (Part 3, s. 28); agency reports to Ka Niigaanibowe’t (Part 3, s. 28(q)); Ka Niigaanibowe’t appoints members of the board of the agency (Part 3, s. 34); Ka Niigaanibowe’t shall not interfere in the day-to-day operations of the Agency, but if service delivery does not meet standards, Ka Niigaanibowe’t may temporarily direct the agency in its work (Part 3, s. 33-34); standards developed by the agency must be adopted by the board and

approved by Ka Niigaanibowe't (Part 3, s. 32(a)). The Executive Council is the body for negotiating and entering into funding agreements and shall disburse any funding received (Part 4, s. 53).

- **Inuvialuit** – The Inuvialuit Social Development Program is a subset of its Board (leadership). The Inuvialuit Social Development Program creates the agency, incorporates it as a non-profit, appoints directors to its board. Agency has to report to Inuvialuit Social Development Program. An Advisory Committee with members of each community provides guidance to the agency (Part 5, s. 14-16).
- **Kitchenuhmaykoosib Inninuwig** – Chief and Council are the ultimate authority. Chief and Council appoints the DOO (governance structure – works on behalf of Chief and Council on all matters related to children, youth, and families in KI) and oversees the operations. Two members of Council sit on the DOO. Chief and Council appoints the grandmothers/fathers council to assist families and resolve disputes and ratifies decisions made by the grandmothers/fathers. Chief and Council has authority to sign all customary care agreements when recommended by DOO or the Nation's external FNCFS agency, Tikinagan (s. 3.4).
- **Loon River, Lubicon Lake, Peerless Trout** – Chief and Council can request information for Onikanew (s. 5.8). Leadership of the Founding First Nations may make a number of resolutions dealing with operation of the child welfare system (s.5.9) and the enactment of the law (s. 20). No substantial role for Chief and Council in daily operations.
- **Louis Bull** – Chief and Council's role seems limited to governance and law-making (s. 12.2.1).
- **Peguis** – Chief and Council have resolution-making power regarding agency powers, duties, functions, limited only by the best interests of the child (s. 5.3). Council reserves the right to make representations in court proceeding (s. 5.4). Entitled to notification by Agency and investigation report regarding the death of a child (s.8.21).
- **Splatsin** – Chief and Council see to it that the provisions of the law are carried out, appoints persons to perform duties under the law, has regulation-making powers, is the legal guardian of a child who is taken into care, may remove a child from the home when the child is in need of protection (ss. 4(a), 4(b), 4(c); s. 5; s. 6).

- **Sts'ailes** – Chief and Council may make regulations or pass Council Resolutions that provide for or update provisions, forms, or applications of the Law or that put in place any other matter require to implement the Law (s. 38.4). The Snowoyelh Department is designated by Chief and Council to administer child and family services (s. 3.1 (ff)). Chief and Council may enter into coordination/written agreements for funding and coordination of services (s. 7.1).
- **Wabaseemoong** – Not specified in the law. The Agency is overseen by a Board of Directors. Chief and Council involved in governance matters. There are also traditional governance structures woven throughout the law, e.g., re the selection of Board members. In practice, traditional governance is overseen by an Ogichidaa-Kwe and other governance overseen by Board and Intergovernmental Affairs dept.



6. Decision-making process – how are decisions made with respect to children and families?

- **Anishinabek Nation** – A Plan of Care Committee works with the child/youth/family to develop a plan of care, which is turned into a Plan of Care Agreements (s. 5). The procedure for this is TBD.
- **Atikamekw d'Opticiwan** – Atikamekw Family Council made up of parents, grandparents, the child, stakeholders in the file, and any other person whose presence is deemed necessary. The Family Council meets to explain the reasons why the Director is present in the family's life and to present voluntary measures to put an end to the problematic situation. The Circle can enter into a voluntary agreement describing the commitments of the parents. There is provision for an Atikamekw Arbitration Council who makes decisions in situations where there is no consensus or there is disagreement (see list at s. 134).
- **Atikamekw Nation** – The service delivery model creates 3 councils: Elders' Council, Family Council, and Helpers' Circle. The Elders' Council works to resolve conflict and make decisions where: there is disagreement on the composition of the Family Council or a Family Council can't meet in time, the youth and/or parents disagree on the protective measures to be applied, or, the Director of Social Protection disagrees and elects to use the Elders' Council (or can go to court). The Family Council is comprised of the family, the Director and other invited guests, and its main role is to determine whether protective intervention is needed and why. The Helpers' Circle members are appointed by the Family Council to create a support network around the immediate family to support the agreed upon interventions.
- **Carcross Tagish** – Case management occurs in four stages. The first three (family care, clan care, Family Council (at which stage a Circle is held) are informal and voluntary (ss. 6, 7, 8). All participants are called upon to rely on the traditional practices and values to voluntarily achieve consensus (s. 6.3). The fourth stage – protective intervention – is a last resort and will only be engaged if the community voluntary processes fail or if there's an emergency requiring immediate intervention or if the Family Council determined the voluntary processes to be inappropriate (s. 4.2). The Family Council can refer matters to the Peacemaking Tribunal to have those matters resolved or where the matter has been resolved, give effect to the agreement/make the agreement binding (s. 4.8).

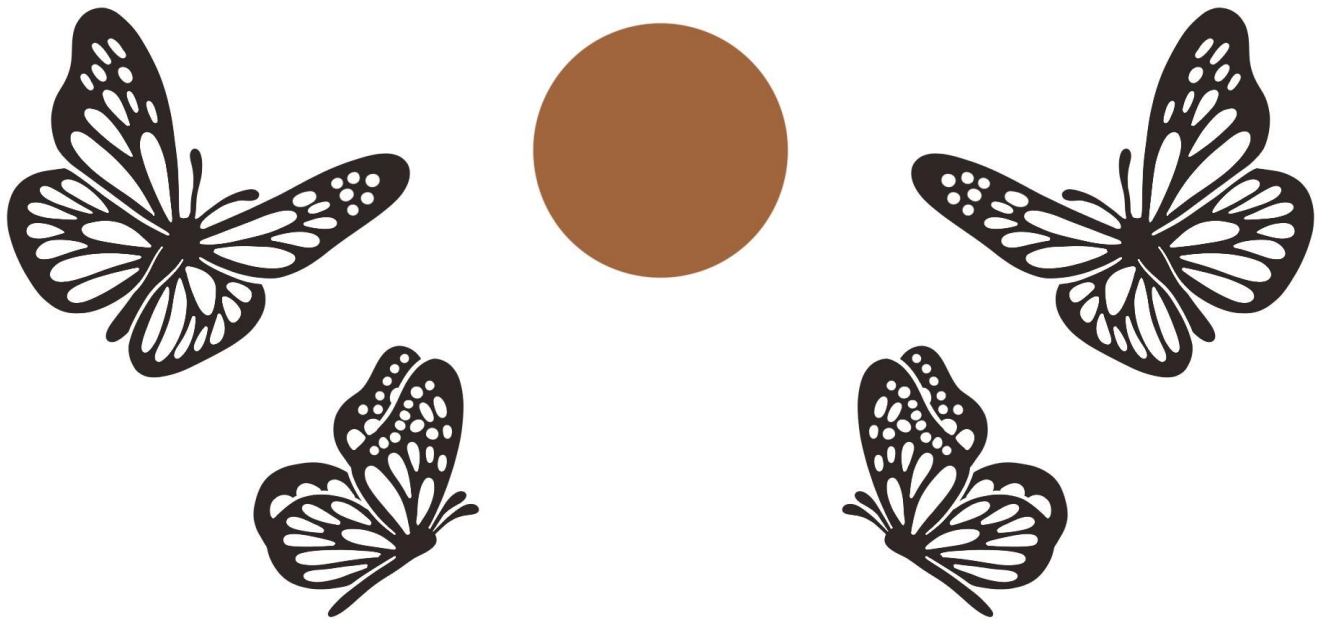
- **Cowessess** – Law creates the Eagle Woman Tribunal with jurisdiction to hear from persons affected by a decision made under the law. No significant detail on the Tribunal in the law
- **Cowichan** – Law emphasizes collaborative decision making (s. 4). Child and family services and practices begin with an initial report and contact with CEO (s. 4.5). CEO gathers information from knowledgeable sources who are concerned about the child and collaboration is done to overcome negative assumptions about the family (s. 4.6). The grandparents play a role and priority is given to collaborating with grandparents about a family resolution unless such collaboration is not in the best interest of the child (s. 4.9). A family spokesperson may also be consulted to ensure decision makers are aware of the specific circumstances of the child (s. 4.10). A Committee will be formed to ensure decision making is guided by teachings and traditional beliefs (s. 4.12). Blanketing Committee also formed to shield family and child from further harm and acts as advisory board when needed (s. 4.18). The law also introduces two phases for alternative adjudication and dispute resolution. The first phase involves the BC Provincial Court and a Sul-hween Harmony Restoring Advisory. The Sul-hween Harmony Restoring Advisory works to assist Cowichan Tribes in the development of their legal orders (s. 8.9-9.12). The law details how the Provincial Court is to work with the Advisory. The law also sets out new rights and responsibilities of Cowichan Tribes citizens and entities under the law, e.g., with respect to party status in a protection hearing (s. 8.27) (among many other matters). The second phase of concerns the power of Council to establish by regulation an Alternative Adjudication and Dispute Resolution Body for the adjudication of disputes under their law.
- **Grand Council Treaty #3** – Abinooji Inakonigewin does not detail decision-making in cases as it operates at a higher level. The law does provide for the creation of community boards who oversee supervision and delivery of services at the community level (ss. 39-43).
- **Inuvialuit** – Will be dealt with in regulations, which are TBD.
- **Kitchenuhmaykoosib Inninuwug** – Family Meetings are the primary mechanism for case management: they are held whenever it is necessary to discuss the situation of a child, youth, family (s.9.4.1). Grandparents and other extended family, a representative from Chief and Council, DOO/Tikinagan staff, Elders, and band reps who are/could be involved with family are all involved (s. 9.4.3.). If an agreement is reached it is recommended to Chief and Council (s. 9.4.5.). If no agreement is reached, Chief and Council may act or

may authorize the grandmothers/fathers to make a decision about what should happen in the family (s.9.4.7).

- **Loon River, Lubicon Lake, Peerless Trout** – The law creates a Dispute Resolution Tribunal (s.12). At least one Tribunal member to be a member of a founding First Nation.
- **Louis Bull** – Employs a Plan of Care Committee to help develop a cultural care plan, as well as a mediation circle to help with issues that arise (s. 10.14; mediation circle defined in Part 2).
- **Peguis** – Elders Council guides the process to assist in coming to a care plan for the child/youth/family. If that process does not work, the Elders Council can refer the matter to the Community Circle of Care, which the Elders Council helps to steer. The Community Circle of Care is an alternative to dealing with child protection and prevention challenges in court. The law also establishes a Family Sharing Circle as an alternative to court to help deal with protection concerns (s. 9.12). The law also creates a process, led by the Elders Council, to allow for legal guardianship in a traditional process, through the establishment of an Acceptance Commission (s.11).
- **Splatsin** – Chief & Council are the decision makers when a child is to be removed from home or returned home. On review (internal appeal) an issue is put to majority vote at a general band meeting (s. 22-23).
- **Sts'ailes** – Chief and Council to appoint a committee, the Snowoyelh Síyam Síyelyólexwa. The committee provides recommendations to the Snowoyelh Executive Director, program managers and officers, acts in an advisory capacity to the Snowoyelh Department for any Sts'ailes cultural training and program delivery, helps to determine if any child, youth, or young adults and families are connected to Sts'ailes, attends and provides recommendations for family planning meetings, and reviews appeals relating to appeal decisions of the Snowoyelh Department Executive Director (s. 9.1). Chief and Council, who establishes a structure for participation and decision-making (Part 3, s. 8.1, 9.1(b)).
- **Wabaseemoong** – Wiidokazowad (a community Judicial Committee) has the authority to hear and participate in case reviews, case conferences, and case consultations that pertain to the provision of protection; to issue temporary placements for children and declare Customary Care for up to one year; to provide pertinent family information and

advise; and to explore alternative actions as may be just and reasonable. It is responsible for ensuring all alternative actions have been exhausted (Part III).

- Any extension of customary care must be brought before the Onakonigewad – a committee established by WIN that has the responsibility to hear and dispense petitions seeking an Order for Customary Care or Custom Adoption; or the suspension of parental rights for protection of a child; or to issue temporary and permanent Orders and other such orders as needed to carry out the intent/purpose of the Customary Care Code (Part III).



7. Appeals – does the law provide an internal mechanism for a child/family to appeal a decision? Are decisions made under the law subject to review or appeal by court?

General

- **Anishinabek Nation** – Not specified in the law.
- **Atikamekw d'Opitciwan** – There is an Atikamekw Arbitration Council who decides certain matters set out at s. 134, where consensus isn't reached or one party disagrees, or where parents refuse to sign or carry out the interventions. The Arbitration Council is a single person who makes a final decision. Their role is set out in Ch. 6.
- **Atikamekw Nation** – Not technically an appeal, but if the Director of Social Policy does not agree with the conclusions of the Family Council re protective intervention, the matter can be taken to court. The Elders Council has some decision-making authority if there is no consensus, although this is not technically an appeal.
- **Grand Council Treaty #3** – Not specified in the law.
- **Inuvialuit** – Law provides that regulations may deal with decision-making and dispute resolution, but absent regulations, there is no change to the jurisdiction of the courts (ss. 59- 61).
- **Louis Bull** – Not specified in the law.
- **Wabaseemoong** – Appeals are dealt with in a separate regulation (Part VII).

Internal Appeals

- **Atikamekw d'Opticiwan** – Where there is a dispute between the parties, the Director appeals to the Arbitration Council. The arbitrator is the one and only person who has the power to render a decision, which is final and without appeal.
- **Carcross Tagish** – not exactly an appeal mechanism, but this law sets out a 3-stage process for resolving family challenges: first Family Care, then Clan Care, then Family Council. Peacemaking Tribunal (internal) and external Courts still have a role to play in determining disputes/child wellbeing issues (s. 4.1- overview of stages).

- **Cowessess** – The child, parent, a family member, someone who cared the child, etc. can request review of the decision from the Oversight Tribunal (s. 12.1).
- **Cowichan** – Council may establish by Regulation an Alternative Adjudication and Dispute Resolution Body for the adjudication of matters and resolution of disputes under the law (s. 8.47). In the interim, the law relies on the Provincial Court with interesting and significant modifications to the typical court process to account for the application of the Indigenous law.
- **Kitchenuhmaykoosib Inninuwig** – Individuals not satisfied with the process for resolving any dispute are invited to raise their concerns with the Okomimaak (decision maker) (s. 12.2).
- **Loon River, Lubicon Lake, Peerless Trout** – Individuals affected by a decision can seek review at the Dispute Resolution Tribunal (s. 13).
- **Splatsin** – Any parent or member of the child's extended family, or guardian, may review the decision to remove the child made by Band Council. On review, the question is put before the Band membership at the next General Band Meeting to be decided by majority vote (s. 12, s. 14-15).
- **Sts'ailes** – A child, youth, young adult, parent, other family member, caregiver, individual who had continuous care of the child for 12 months before the decision, an individual entitled to receive support and financial assistance may appeal a decision of the Snowoyelh Department by providing a written appeal to the Executive Director within 30 days requesting a review (s. 29.1). Further appeal of that decision may be appealed by writing to the Executive Director who will share the written submission with the committee and Sts'ailes CEO (s. 29.4). The second appeal decision by the CEO may be appealed to Council within 15 days of receipt (s. 29.6).

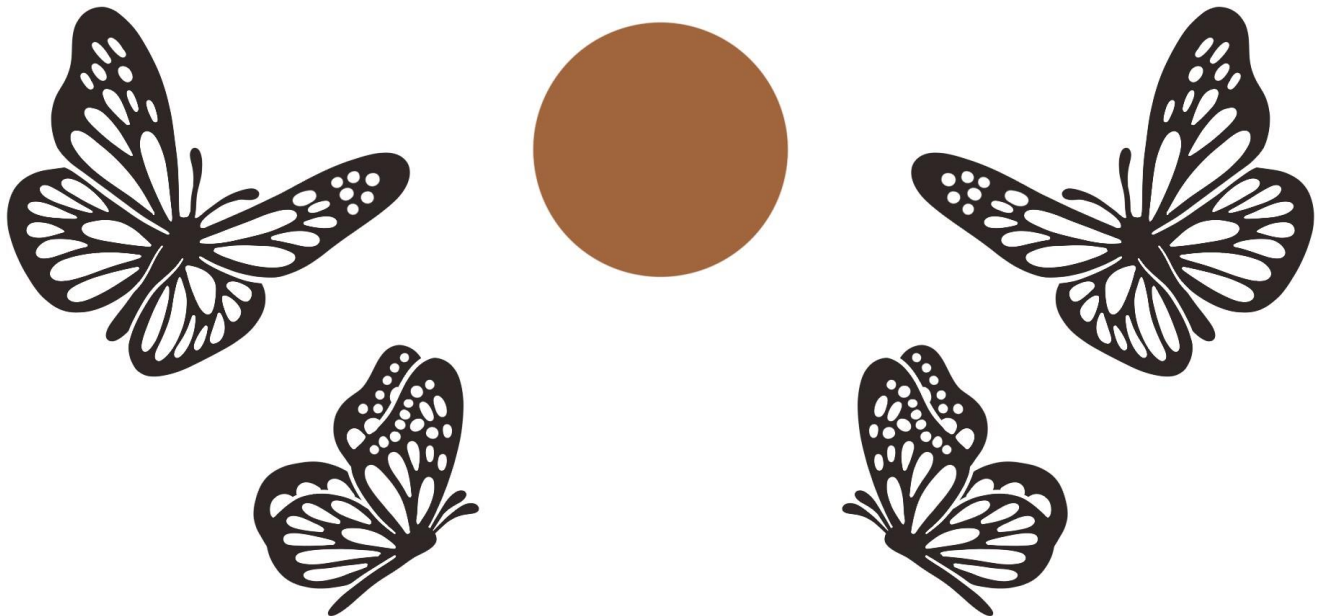
External Appeals

- **Carcross Tagish** – Decision of the CTFN CFS tribunal or court is only appealable to the Yukon Court of Appeal on an error of law (s. 35.7).
- **Cowichan** – Appeal mechanism to the Supreme Court of British Columbia from a decision or order of the Provincial Court made under the Law (s. 8.43). The BC Provincial Court hears a matter arising under the Law including disputes related to the removal of a child under the Law (s. 8.2).
- **Peguis** – The law attorns to the jurisdiction of the Manitoba courts and the appeal processes available under provincial law therefore apply to the Peguis law (until an Indigenous court is created) (s. 8.16).

8. **Children’s Advocate – does the law provide for an advocate, band reps, other third/independent parties (i.e., someone other than the service provider) to protect the interests of children and families?**

- **Anishnabek Nation** – Provides for a Children’s Commissioner (appointed by Grand Council Resolution) (s. 53). The Commissioner is accountable to Anishinabek Chiefs in Assembly and oversees implementation, compliance, and enforcement of the law (s. 53).
- **Atikamekw d’Opticiwan** – not dealt with in the law.
- **Atikamekw Nation** – not dealt with in the law.
- **Carcross Tagish** – Provides for a Child Advocate (hired by Executive Council, independent, resourced by General Assembly and/or Executive Council) (see s. 35.0).
- **Cowessess** – not dealt with in law.
- **Cowichan** – provides for Independent Representative who can be appointed by Council to provide monitoring, oversight and support and advocacy for child and family (s. 10).
- **Grand Council Treaty #3** – not dealt with in law. This is the type of matter that would be set out in community codes.
- **Louis Bull** – Provides for a Children’s Commissioner (appointed by Chief and Council) and a Tribal Family Advocate (appointed by Louis Bull Tribe to advocate for families who may require assistance when dealing with prevention services (section 2, see definitions); may represent families/children who feel they are not properly receiving services from the Asikiw Mostos O’pikinawasiwin Society).
- **Inuvialuit Regional Corporation** – not dealt with in law. But children’s views are to be considered and given significant weight (s. 11(i)). Inuvialuit Qitunrariit Inuuniarnikkun Maligaksat also has a mandate to advocate for children (s. 17).
- **Kitchenuhmaykoosib Inninuwug** – not dealt with in law. But children’s views are to be considered (s. 6.5.4). The law also provides for an interesting and extensive set of rights for children and youth (s.6.3). DO has the authority to act as the “Band Representative” (s. 9.6).

- **Loon River, Lubicon Lake, Peerless Trout** – Onikanew has a role to ensure that children's voices are heard (s. 5.2.3.4).
- **Louis Bull** – The law establishes the Office of the Children's Commissioner (s.12) to oversee implementation and compliance with the law. Views of the child are to be considered (s.6.11.12). When decisions are made about a child, they are to be given the opportunity to express their wishes freely and assisted to express their wishes. Info should be given to the child in a manner they understand (s. 7).
- **Peguis** – not dealt with in law.
- **Sts'ailes** – The Te Emi:melh/Advocate Program develops and delivers advocacy support for children, youth, young adults and families and has a focus on prevention, intervention and support services (s. 13.1).
- **Wabaseemoong** – Children's interests are represented by a person of the child's choosing, or themselves. Children also have a right to be heard on decisions affecting them (Part VI).



9. Managing risks & assessments – What are Indigenous law-makers doing differently vis-à-vis risk, parental removal, prevention, residential care?

Differently in prevention and protection?

- **Anishinabek Nation** – This law allows for participating First Nations to create their own community standards regarding the best interests of the child and determinations of whether a child is in need of protection – flexibility to respect different contexts (s. 63).
- **Atikamekw d’Opticiwan & KI** – Prevention services are available to the whole community – a child/family does not have to be struggling or in crisis to access services.
- **Atikamekw Nation** – Director of Social Policy makes decision if an intervention is needed. Uses a collaborative model whereby the child/youth, parents, Director of Social Policy, and other invited guests engage in a dialogue to decide what protective intervention measures are needed.
- **Carcross Tagish** – One unique feature of this law is the emphasis on the role of the Clan in supporting families. All Clan members have responsibilities to child and family wellness (Part 2, s. 6; Part 5, s. 7).
- **Cowessess** – Provides that, to the extent that it is consistent with the best interests of the child, a child must not be apprehended solely on the basis of their socio-economic conditions including poverty, lack of adequate housing, state of health of their care provider (s. 6.11).
- **Cowessess & Peguis** – In emergency situations, if the Director (or Agency in the Peguis law) is satisfied that a Child may be in need of intervention because the parent cannot be located/died/became incapacitated, the Director/Agency may appoint a person to care for the child. The person appointed may enter the residence, live in the residence, and carry-on normal housekeeping activities in the residence or can care for the child in their own residence (s. 8.9(1); s. 8.7(a)(b)).
- **Cowichan** – Support services include a recognition of the social determinants of health in addition to basic needs (s. 5.1). Post majority support services also established to help assist youth transition from 19 to the age of 27 (s. 5.6). When taking any intervention action, the CEO must make efforts to find the least disruptive measure of assisting the parent (s. 7.2). Culturally-based voluntary family arrangements can be made so the child may be raised with grandparents or other family members (s. 7.3).
- **Grand Council Treaty #3** – “This Law should be interpreted having regard to realities that may affect the best interests of a child, including: ... No life is free from risk, nor will

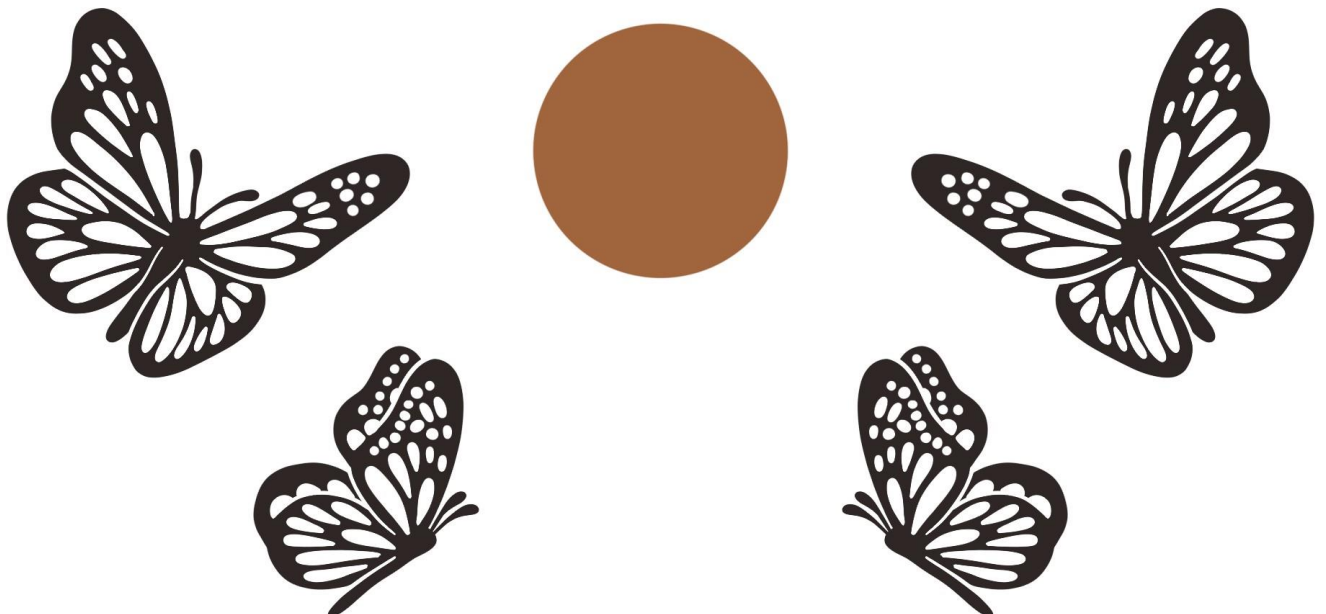
it be; Living conditions affecting many Anishinaabe people may expose their children to higher risks tha[n] those of most other; Standards that reduce certain risks but result in injury to a child's identity or cultural supports may not be consistent with the best interests of the child" (Part 1, s. 6(b)-(d)).

- **Inuvialuit** – This law provides that protection service providers receive cultural competency training (ss. 41-42).
- **Kitchenuhmaykoosib Inninuwug** – This law brings in all sectors of the community working with children and families to be overseen by a joint board (the DOO) (s. 7.2.1). Not only those sectors directly considered child and family services are involved in the DOO.
- **Loon River, Lubicon Lake, Peerless Trout** – Adopts the prevention-first language of the Federal Act. Interesting approach to customary care (s.8.6) whereby a caregiver can enter and live in the residence of the child they are caring for.
- **Peguis** – There is a unique focus on child sexual abuse issues. The Peguis law allows for the establishment of a cross-disciplinary Child Abuse Committee that is responsible for investigating and making policies on child sexual abuse prevention (s.8.4).
- **Splatsin** – One of the grounds for finding a child "in need of protection" is if a "parent, extended family member or Indian guardian asks the Indian Band to take care of the child" (s. 7(a)).
- **Sts'ailes** – This law has a big focus on prevention and on collaboration for services (s. 11(i)-(m), s. 19). Reconnection services and efforts are noted for youth and young adults who live outside the Sts'ailes community with recognition of the need to reconnect to culture (s. 11(r)).
- **Wabaseemoong** – This law has a big emphasis on the roles of grandparents and empowering traditional family roles within Anishinaabe society. This law is also unique in the detailed establishment of internal governance and decision-making structures (Onakonigewad and Wiidokazowad).



10. Custom Adoption

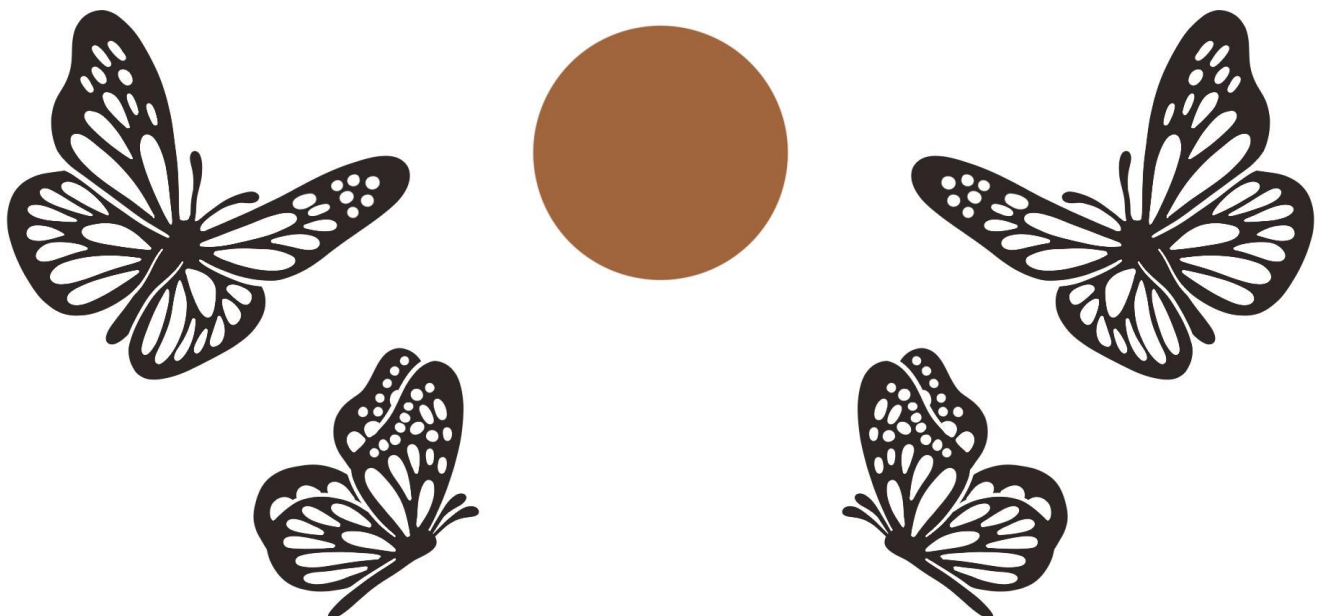
	Is custom adoption provided for in the law?
Anishinabek Nation	✓
Atikamekw d'Opticiwan	✓
Atikamekw Nation	Not specified
Carcross Tagish	✓
Cowessess	✓
Cowichan	✓
Grand Council Treaty # 3	Not specified
Inuvialuit	✓
Kitchenuhmaykoosib Inninuwug	✓
Loon River, Lubicon Lake, Peerless Trout	✓
Louis Bull	✓
Peguis	✓
Splatsin	Not specified
Sts'ailes	✓
Wabaseemoong	✓



11. Investigate and removal power – what powers are given to the agency?

- **Anishinabek Nation** – The law contains provisions for investigation and taking in of children in need of protection that are substantially similar to mainstream law (ss.23-43).
- **Atikamekw d'Opticiwan** – The Director of Social Protection may at any time remove the child from the place where they are for a period of 48 hours which may be renewed up to one day to a maximum of 14 days. Investigation powers are provided for after receipt of a protection complaint.
- **Atikamekw Nation** – The Director of Social Protection decides if an intervention may be necessary and then acts to find information. If there is a temporary measure needed then the Director tries to get family agreement. If not, the Director can take steps for up to 3 days. There is a process where the family and the Director of Social Protection form a Family Council and work together to determine if protective intervention is needed. Consensus is the goal. If there is no agreement, the Director can go to court.
- **Carcross Tagish** – Provides for emergency intervention with a warrant and emergency intervention without a warrant (where the child is in imminent danger).
- **Cowessess** – The Director may request the assistance of a peace officer and may convey a child to any place in order to complete an investigation.
- **Cowichan** – If the CEO has reasonable grounds to believe a child is in need of protection, the CEO may apply to a judge for an order without notice (s. 6.11). The judge may grant the CEO the authorization to remove the child from the place they are located to transport for an interview or medical examination (s. 6.12). If the child is in immediate danger, the CEO may immediately take charge of the child for a period of up to 72 hours (s. 7.20). If the child is in immediate danger, the CEO may, without court order, and without consent of a parent, enter into premises for the purpose of taking charge of the child if they believe the child to be on the premises (s.7.21).
- **Grand Council Treaty #3** – Not specified in the law.
- **Inuvialuit** – Not specified in the law. Protection services are to continue to be provided by existing protection service providers (with some specifications, Part 7).

- **Kitchenuhmaykoosib Inninuwug** – In emergency situations, the First Nation’s agency has the right to request and receive police assistance and the right to enter any premises where there is serious risk of harm to the child (s.9.5.2).
- **Loon River, Lubicon Lake, Peerless Trout** – The Onikanew has powers of investigation and apprehension. Definition of neglect and harm substantially similar to mainstream law (s. 8.12).
- **Sts’ailes** – An agency worker may enter a place/premises to search for a child and to investigate whether a child is in need of intervention or protection (s. 20.4). If the department is of the opinion that a child is in need of intervention/protection, they must take whatever action under the Law that they consider appropriate to ensure the safety and well-being of the child (s. 20.5). If there is a reasonable belief that a child is in urgent need of intervention/protection and the department worker cannot carry out an investigation or respond, the department may request emergency response support from another child and family services provider (s. 20.6). Department has powers of apprehension (s. 21).
- **Splatsin** – “The Chief and Council and every person authorized by the Chief and Council may remove an Indian child from the home where the child is living and bring the child into the care of the Indian Band, when the Indian child is in need of protection” (s. 6).
- **Wabaseemoong** – The Agency has the power to bring children into customary care under the direction of the Wiidokazowad (Part IV). Long-term placements in customary care are made by decision of the Onakonigewad.



12. Supports for youth – what supports are available to youth, including youth with dependents, under the law? for how long/on what conditions are these supports available?

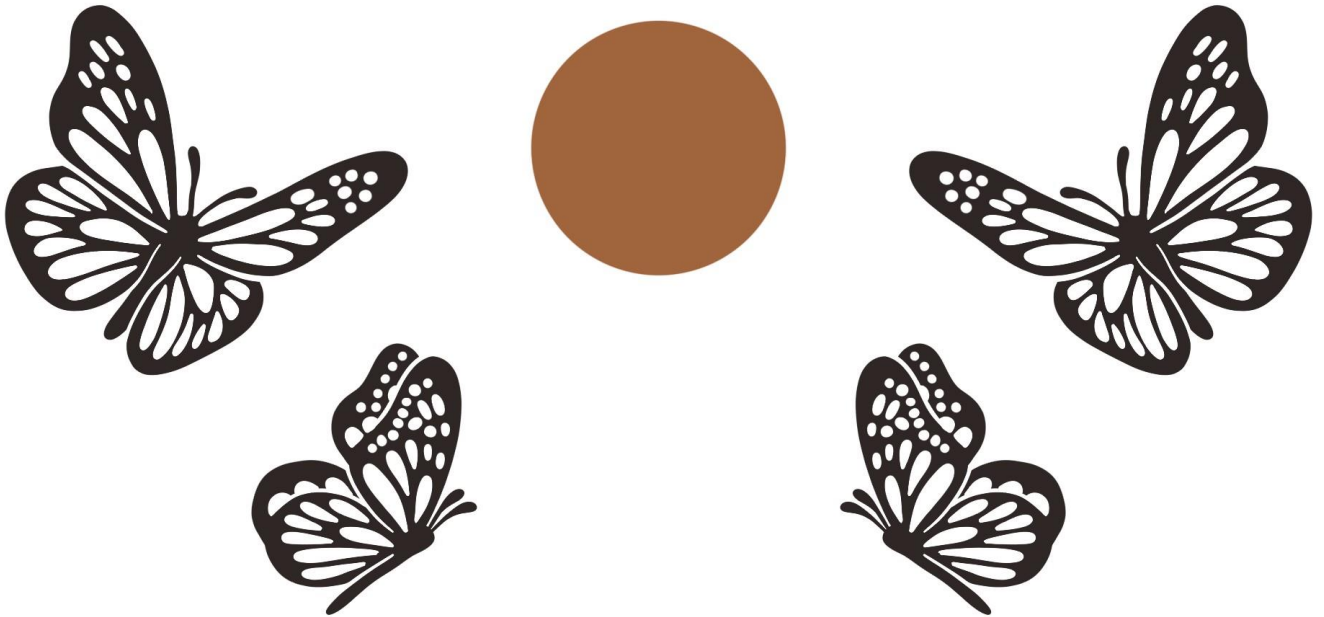
	Law speaks to/ provides for youth supports	To what age
Anishinabek Nation	Not specified	
Atikamekw d'Opticiwan	Not specified	
Atikamekw Nation	Not specified	
Carcross Tagish	Not specified	
Cowessess	Not specified	
Cowichan	✓	27
Grand Council Treaty # 3	Not specified	
Inuvialuit	✓	29
Kitchenuhmaykoosib Inninuwig	✓	21
Loon River, Lubicon Lake, Peerless Trout	✓	24
Louis Bull	Not specified	
Peguis	✓	26
Splatsin	Not specified	
Sts'ailes	✓	Not specified
Wabaseemoong	Not specified - in practice youth served to age 29	29



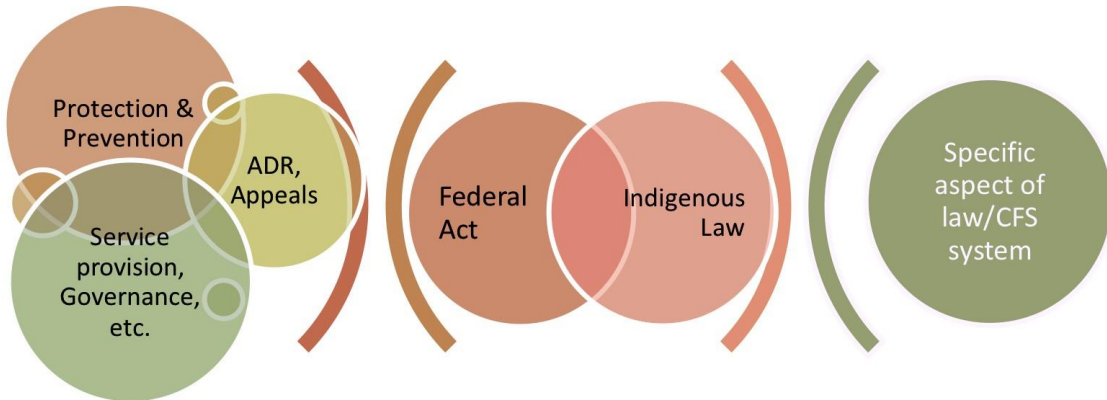
13. Children's residences – what does the law say about how homes for children are to be regulated or overseen?

- **Anishinabek Nation** – Not dealt with in detail in the law. Each participating First Nation has the authority to approve foster/care homes in accordance with regulations to be made under the law (s. 67).
- **Atikamekw d'Opticiwan** – Not specified in the law.
- **Atikamekw Nation** – Not specified in the law.
- **Carcross Tagish** – The law states that Council will develop process/criteria for foster homes, with efforts made to keep children in homes with their Clan, other First Nations, someone who respects their Khustéeyi (culture) (Part 7, s.7).
- **Cowessess** – The law sets out some requirements for residential facilities licensing, facilities inspection, license suspension (ss. 8.24, 8.25, 8.27, 8.28, 8.30). The law does not prescribe standards.
- **Cowichan** – Not specified in the law. The Cowichan Tribes' Child and Family Services Authority will establish regulations to establish and license care homes and other residential facilities (s. 11.7 (iv)).
- **Grand Council Treaty #3** – Not specified in the law.
- **Inuvialuit** – This law provides some detail on the powers of Inuvialuit Qitunariit Inuunuarnikkun Malgaksat to create regulations for children's residences and operate children's residences (ss. 48- 50).
- **Kitchenuhmaykoosib Inninuwug** – Not specified in the law.
- **Loon River, Lubicon Lake, Peerless Trout** – Some detail on approval/cancellation of Care Homes, standards, and inspection, but not detailed (s. 8.22-8.27).
- **Louis Bull** – Not specified in the law.
- **Peguis** – This law sets out some detail on approval/cancellation and inspection of licensing for children's residences (ss. 5.4, 8.25-8.30). First Nation is empowered to create licensing regulations (s.8.24). No standards.
- **Splatsin** – Not specified in the law.

- **Sts'ailes** – Residential facilities for children, youth, and families to comply with Sts'ailes maintenance, security, privacy and health department standards (s.27.1).
- **Wabaseemoong** – Dealt with in detail in regulations.



Other Observations About Indigenous Laws re Child and Family Services



Some laws are more or less a "complete code" dealing with most areas in child and family services, e.g.: KI, Wabaseemoong, Cowichan.

Some laws adopt significant parts of their text from the Federal Act, e.g.: Cowessess; Loon River, Lubicon Lake, Peerless Trout; Peguis.

Some laws are not aiming to be a complete code, but deal mainly with a core area of importance, e.g.: Grand Council Treaty #3, Splatshin, Atikamekw Nation.

