

BACKGROUNDER –

Alternate Decision Makers in the Child and Family Services (CFS) System

Background:

The federal Act respecting First Nations, Inuit and Métis children, youth and families came into force in 2020. The act creates a path for Indigenous governments to assume jurisdiction over child and family services, and for their law to have precedence over provincial law.

Recently, the provincial Child and Family Services Act has been amended to create space for Indigenous jurisdiction. This includes:

- Setting out a definition of “Indigenous Service Provider”
- Enabling information sharing with Indigenous Service Providers
- Creating new types of placement agreements for children, such as kinship or customary care
- Establishing how “alternate decision makers” may be authorized to make decisions about a child without being the child’s parent or legal guardian

Why is this necessary?

The landscape of CFS is changing. Amendments to the CFS Act recognize that a person responsible for the day-to-day care of a child may need to make decisions, even though they are not the parent or legal guardian.

Services provided under Indigenous law may also not transfer guardianship. Recognizing “alternate decision makers” allows provincial systems, such as health and education, to better support Indigenous children and families without relying on legal transfers of guardianship when children cannot be cared for by their parent or guardian.

Is this information sharing permitted under FIPPA and PHIA?

The Freedom of Information and Protection of Privacy Act (FIPPA) and The Personal Health Information Act (PHIA) have both been amended to allow an alternate decision maker to exercise the same rights as a parent or guardian. Both acts now include a definition of “alternate decision maker.” Under Section 79(d) of FIPPA and Section 60(1)(e) of PHIA, an “alternate decision maker” is now permitted to exercise the rights of another person (i.e. the child in their care).

How do I know if someone presenting as an “alternate decision maker” is actually authorized to receive information about a child?

Section 15.1 of the CFS Act sets out what is required for an alternate decision maker to receive information. A CFS agency or Indigenous Service Provider established under Indigenous CFS law must provide a signed statement with specific information, including the person’s and the child’s name, and the nature of the decision-making authority. Provincial CFS agencies will use a standard form for these signed statements. Indigenous service providers may choose to use different formats to authorize “alternate decision makers.” In case of uncertainty, people should contact the Indigenous Service Provider.