

CHILD-CENTRED DECISION-MAKING



Ministry of
Attorney General

Relevant Sections: [37](#), [38](#), [202](#), and [203](#)

WHAT THE FAMILY LAW ACT SAYS:

The *Family Law Act (FLA)* promotes child-centred decision-making by emphasizing the need to consider the best interests of a child and their views in family law disputes. The best interests of a child are at the centre of all decisions about who can spend time with and care for a child. In fact, the best interests of the child must be the only consideration when the court makes orders or when people make agreements about guardianship, parenting arrangements, or contact with a child.

The FLA has a list of the things that must be considered when deciding what is in a child's best interests, which includes the following:

- the child's health and emotional well-being;
- the child's views, unless it would be inappropriate to consider them;
- the nature and strength of the relationships between the child and significant persons in the child's life;
- the history of the child's care;
- the child's need for stability, given the child's age and stage of development;
- the ability of a person to exercise their responsibilities in caring for or spending time with the child;
- the impact of any family violence on the child and the ability of the person responsible for the family violence to care for the child (for more information see **Backgrounder: Family Violence**);
- the appropriateness of an arrangement that would require the child's guardians to cooperate; and
- any civil or criminal proceeding relevant to the child's safety, security or well-being.

There are different ways that a child's views can be made known to the family and the court. For example, a child might write a letter to the judge or prepare an affidavit with their views. The judge can also informally interview a child outside of the courtroom to talk about the child's views. Other professionals can also interview a child and write a report for the court to consider the child's views about a family law dispute (for more information see **Backgrounder: Assessments and Reports**). The court is also able to appoint a lawyer to represent a child in a family law dispute if the best interests of the child are not being adequately protected.

SOME ISSUES WE KNOW ABOUT:

The FLA's list of best interests of the child factors may need updating. For example, the current list of factors does not include considerations related to a child's Indigenous (First Nations, Inuit, and Métis) and other cultural, linguistic, religious and spiritual upbringing and heritage, the importance of preserving cultural connections and relationships with groups and communities, the needs of a child with disabilities, or a child's ability to exercise their rights without discrimination, including discrimination based on sex or gender identity or expression.

The FLA could also provide more detail about how a child could provide their views about a family law matter. For example, more guidance in the Act could help the court decide when a letter or affidavit from a child could be appropriate, or when and how judges can interview a child. It has also been suggested that it should be easier for the court to appoint a children's lawyer and it should not be limited to cases of severe conflict between the parties. And, there may be other ways to hear from a child that are not included in the FLA right now.

INDIGENOUS PERSPECTIVES:

- How do you think the *Family Law Act's* best interests of the child factors could be updated to consider the best interests of Indigenous children?
- Are there specific considerations or processes the court should follow when obtaining the views of an Indigenous child through a letter, an affidavit, a judge's interview, or by appointing a children's lawyer?
- Are there other ways the views of an Indigenous child can or should be obtained or considered in family law disputes under the *Family Law Act*?