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Memorandum



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To: ALL BC FIRST NATIONS CHIEFS AND LEADERS

FROM: First Nations Leadership Council

DATE: October 27, 2022

RE: Legislative Changes to the *Child, Family and Community Services Act* and the *Adoptions Act*

Purpose

The purpose of this briefing package is to provide an overview and analysis of the substance of new legislation on child and family services with the introduction of Bill 38 on October 26, 2022, in the British Columbia Legislative Assembly.

Bill 38, *Indigenous Self-Government in Child and Family Services Amendment Act*, brings major shifts with amendments to the *Adoption Act*, RSBC 1996, c 5 (the “*Adoption Act*”) and *Child, Family and Community Services Act*, RSBC 1996, c 46 (“*CFCSA*”).¹ There are also minor and consequential amendments to the *Public Guardian and Trustee Act*.

This package of legislative amendments is among the first “sectors” or areas of provincial law and policy that is being aligned with the United Nations Declaration on the Rights of Indigenous Peoples, fulfilling the commitment in the Declaration on the Rights of Indigenous Peoples Act “*DRIPA*.”

Attached you will find several documents prepared by the FNLC:

1. Analysis and overview of new legislative changes.
2. Table or quick summary of changes
3. An appendix of the key provisions that will change in the *Adoption Act*,
4. An appendix on the key provisions that will change in the *Child Family and Community Services Act*.

¹ Bill 38 – 2022 *Indigenous Self-Government in Child and Family Services Amendment Act*, 3rd Session, 42nd Parliament (2022), online: <<https://www.leg.bc.ca/parliamentary-business/legislation-debates-proceedings/42nd-parliament/3rd-session/bills/first-reading/gov38-1>>

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Part One – Defined Terms

The proposed amendments to the *Adoption Act* and the *Child, Family and Community Service Act* include significant revisions to the defined terms included in each piece of legislation. This begins to modernize both acts by replacing terms like “Indian band” and “aboriginal community” with “First Nation,” “Indigenous community,” and “Treaty First Nation.”² The terms “Indigenous peoples” and “Indigenous governing body” have been added with definitions harmonized with those in *An Act respecting First Nations, Inuit and Métis children, youth and families*, S.C. 2019, c. 24 (the “federal Act”) and the provincial *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (“*DRIPA*”). The amendments also include an expanded set of criteria related to a child’s Indigenous identity that remove reliance on *Indian Act* registration and affirm the ability of Indigenous children, parents, and communities to determine membership and belonging.

Other changes to language across both statutes include the use of the terms “consult and cooperate” when describing the director or an adoption agency’s obligation to engage with Indigenous communities.³ In several instances, this phrase replaces the word “involve”, which emphasizes that a central purpose of

² Appendix A, section 1, at pages 1 – 4.

Appendix B, section 1, at pages 2 – 7.

³ Appendix A, section 7(1); at page 8.

Appendix B, sections 3(b), 4.5(b), 50.01(b), 50.06, 91.2(1), and 92.1, at pages 7, 10, 26, and 41.

the amendments is to increase the Province's responsibility to meaningfully engage with Indigenous communities. This marks a shift from a child and family service regime that is wholly imposed on Indigenous families to one that is determined through collaboration, with Indigenous self-determination respecting the well-being of children and families at the centre.

Part Two – Adoption Act

(a) Self-determination

The emphasis on self-determination brings the *Adoption Act* in line with the federal Act by affirming that the inherent right to Indigenous self-government includes jurisdiction over child and family services, including adoptions. This is established by the inclusion of a new principle – the “self-government principle” – which requires that, where an Indigenous child's legal guardian is the state (either by way of a Continuing Custody Order or under the operation of section 51 of the *Infants Act*), the *Adoption Act* must be interpreted and administered in accordance with Indigenous self-government, as recognized and affirmed by section 35 of the *Constitution Act, 1982* and by *United Nations Declaration on the Rights of Indigenous Peoples*.⁴

To actualize the affirmation of Indigenous self-determination respecting adoptions, the revised *Adoption Act* includes a new requirement that the consent of the applicable Indigenous governing body be sought prior to the adoption of any Indigenous child who is in care (or who has been placed for adoption by an extra provincial agency).⁵ Additionally, a new division is created titled “Agreements Respecting the *Declaration on the Rights of Indigenous Peoples Act*”.⁶ The provisions contained in this division align the *Adoption Act* with sections 6 and 7 of *DRIPA* by setting out a framework for the shared exercise of statutory power, through “decision-making” and “statutory power” agreements, between the Province and an Indigenous governing body. Service delivery staff,

⁴ Appendix A, section 3.2, at page 6.

⁵ Appendix A, section 13(3)(c) and 13(b), at page 10.

⁶ Appendix A, sections 74.2 - 74.4, at pages 13 – 14.

including "child protection" workers, will have a positive obligation not only to be aware of a child's Indigenous identity, but also to determine whether there is an Indigenous authority exercising jurisdiction in relation to the child, whether through the affirmation of an Indigenous law or by way of an agreement under the *DRIPA* framework.

(b) Best Interests of Indigenous Children

The amended *Adoption Act* incorporates several principles from the federal Act related to the best interests of Indigenous children. Firstly, the unique interests of Indigenous children are recognized in a new set of factors to be considered when assessing the best interests of an Indigenous child, such as cultural continuity, Indigenous identity, community/familial connection, and customary planning, that directly mirror the factors set out in section 10 of the federal Act.⁷ Also in line with the federal Act is the inclusion of considerations related to substantive equality to ensure children do not experience discrimination related to their Indigenous identity, race, colour, ancestry, place of origin, religion, family status, physical or mental disability, sex, sexual orientation and gender identity or expression.⁸ Substantive equality requires that all children can expect to achieve the same outcomes as a result of child and family services that account for their unique needs and circumstances. The cultural rights of Indigenous children are protected and promoted throughout the revised *Adoption Act*, with the obligation on the director, or adoption agency, to make all reasonable efforts to obtain and preserve information relating a child's Indigenous cultural identity and community and to share that information with the child, if sufficiently mature, or the child's adoptive parent.⁹

Part Three – *Child, Family and Community Service Act*

(a) Self-determination

⁷ Appendix A, section 3.1, at page 6.

⁸ Appendix A, section 3(1)(g), at page 5.

⁹ Appendix A, sections 6(h), 6(1.1), and 62(1), at pages 1 –2 and 10.

The “self-government principle” is also included in the proposed amendments to the *CFCSA*, similarly affirming that the self-government rights protected by section 35 of the *Constitution Act, 1982* and affirmed in the *United Nations Declaration on the Rights of Indigenous Peoples* include jurisdiction over child and family services. The “self-government principle” is included in a new section of the Act - “Part 1.1 - Introductory Provisions Relating to Indigenous Laws and Indigenous child,” which explicitly affirms that Indigenous laws have the force of law in BC, and grants those laws paramountcy over the *CFCSA* to the extent of any conflict or inconsistency.¹⁰ This ensures that any laws affirmed by an Indigenous community under the federal Act are recognized by the Province as a valid exercise of jurisdiction over child and family services.

Part 1.1 creates a new set of obligations on the director to determine whether there is an Indigenous authority and/or Indigenous laws with jurisdiction respecting an Indigenous child. Although an Indigenous law cannot impose specific duties or restrictions on the director, or require the director to provide specific services, the director is required to defer to any Indigenous authority with jurisdiction related to an Indigenous child and/or to provide services in manner that is consistent with the Indigenous law (or otherwise in accordance with an applicable agreement between the director and an Indigenous community).¹¹ Additionally, Part 1.1 directs any disputes about the application of Indigenous laws to be resolved through consultation and cooperation (including through mediation or another form of alternative dispute resolution), and places an onus on the director to ensure any disputes do not result in a disruption of services to the child.¹² Provincial courts will only have the jurisdiction to resolve a legal dispute arising under an Indigenous law if the Indigenous law provides for that jurisdiction.¹³ The procedures related to an application for a court order that an Indigenous law does not apply to a child expressly grant party status to a child’s Indigenous community, which ensures that the community is in a position to

¹⁰ Appendix B, sections 4.1 - 4.5, at pages 8 – 10.

¹¹ Appendix B, section 4.3 and 4.4, at page 8 and 9.

¹² Appendix B, sections 4.5, at page 10; section 22(2), at page 16.

¹³ Appendix B, section 99, at page 42.

make representations respecting customary and traditional ways of caring for children in service of the child's best interests.¹⁴

Other changes that affirm the jurisdiction of Indigenous communities over children and families include new provisions that provide for Indigenous authorities to receive and respond to reports that a child is in need of protection, and to require that the director withdraw proceedings under the act when an Indigenous authority intends to provide services to an Indigenous child.¹⁵ The director's withdrawal will cancel any interim, supervision, or temporary custody orders respecting the child.¹⁶ A new service delivery principle is also added to outline the director's obligation to meaningfully engage with an Indigenous child's community through consultation, cooperation, and coordination with respect to the planning and delivery of services to Indigenous children.¹⁷

A new division is also added to the *CFCSA* to mirror that included in the amended *Adoption Act* respecting "decision-making" and "statutory power" agreements between the Province and an Indigenous authority, in accordance with the framework provided in section 7 of *DRIPA*.¹⁸ The inclusion of these provisions in both the *Adoption Act* and the *CFCSA* ensures ministers are able to negotiate and enter into agreements with the Indigenous authorities regarding the provision of a full range of child and family services. A further division is added to the *CFCSA* to build a similar framework allowing for agreements between the Province and Nis×a'a Nation or another Treaty First Nation¹⁹. This creates a framework under which Nis×a'a Nation or another Treaty First Nation can amend final treaty agreements to include the authority to affirm Indigenous laws related to child and family services.

¹⁴ Before or during a presentation hearing: Appendix B, sections 33.04 and 33.05, at pages 18-20.
After a presentation hearing: Appendix B, sections 48.2-48.5, at pages 22-25.

¹⁵ Child protection reports: Appendix B, sections 14 (1.1) and 16(1), at pages 12-13.
Director's withdrawal before or during a presentation hearing: Appendix B, section 33.02, at page 17.
Director's withdrawal after a presentation hearing: Appendix B, section 48.1, at page 21.

¹⁶ Before or during a presentation hearing: Appendix B, section 33.06, at page 21.
After a presentation hearing: Appendix B, section 48.1, at page 26.

¹⁷ Appendix B, sections 3(b) and 3(d.1), at page 7.

¹⁸ Appendix B, sections 89.1 - 89.4, at pages 35 - 37.

¹⁹ Appendix B, sections 90.2 - 90.8, at pages 37 - 40.

(b) Best Interests of Indigenous Children

Similar to the amendments to the *Adoption Act*, the proposed revisions to the *CFCSA* include principles from the federal Act related to the best interests of Indigenous children. Substantive equality is recognized by a new service delivery principle aimed at ensuring that all Indigenous children receive services that are “planned and provided in ways that prevent discrimination prohibited by the *Human Rights Code* and that promote substantive equality, respect for rights and culture and, in the case of Indigenous children, cultural continuity”.²⁰ Additionally, section 13 of the *CFCSA* has been amended to include a clause clarifying that poverty, the lack of adequate house or infrastructure, and the state of health of a parent does not make a child “in need of protection”.²¹ This change is in line with the federal Act’s emphasis on preventative measures because it ensures that families who need support due to their socioeconomic conditions will be able to reach out to child and family service agencies for supports without facing the risk that a child will be removed from their home.

Part Four – Indigenous Director of Child Welfare

The *CFCSA* amendments create a new Indigenous Child Welfare Director with the same role and scope of authority as other directors.²² The Indigenous Child Welfare Director will have the additional responsibility of providing advice and guidance to other directors to ensure that Indigenous children and families are being properly served under the *CFCSA*. This position will be filled only through consultation and cooperation with Indigenous communities to ensure the role meaningfully reflects the concerns and interests of Indigenous families.

Part Five – Public Guardian and Trustee Act and Infants Act

²⁰ Appendix B, section 3(b.1), at page 7.

²¹ Appendix B, section 13(3), at page 10.

²² Appendix B, section 91.2, at page 40.

The proposed amendments to the *Infants Act*, RSBC 1996, c 233, and the *Public Guardian and Trustee Act*, RSBC 1996, c 383, in addition to corresponding revisions to the *CFCSA*, ensure that Indigenous children who are in the care of an Indigenous authority have the same rights with respect to having the Public Guardian and Trustee act as their property guardian as do children who are in government care.²³

²³ Revised *Public Guardian and Trustee Act*: section 7(1).
Revised *Infants Act*: section 16.
Revised *CFCSA*: sections 51.1, 53, and 103.

Adoption Act, RSBC 1996, c 5

Table of Changes

<i>Section</i>	<i>Amendments</i>
PART 1 – Introductory Provisions	
s. 1 - Definitions and interpretation	<ul style="list-style-type: none"> - Adds definitions for “First Nation child”, “Indigenous child”, “Indigenous community information”, “Indigenous governing body”, “Indigenous peoples” - Amends the definitions of “designated representative”, “relative”, “treaty first nation” - Removes the definitions of “aboriginal child”, “aboriginal community”, “Indian band”
s. 3 - Best interests of the child	- Amends factors related to the best interests of a child
s. 3.1 - Best interests of Indigenous children	- Adds additional factors to be considered related to the best interests of Indigenous children
s. 3.2 - Self-government principle	- Adds the “self-government principle”
PART 2 – The Process Leading to Adoption	
	Division 1 – Placement for Adoption
s. 6 - Before placement by a director or an adoption agency	- Adds director’s obligation, before placing a child for adoption, to obtain, preserve, and share information related to an Indigenous child’s cultural identity and community
s. 7 - Before placement of Indigenous child for adoption	- Adds director’s obligation to consult and cooperate with an Indigenous child’s Indigenous community prior to placing an adoption placement
s. 8 - Before a direct placement	- Adds director’s obligation, before a direct placement, to share information related to an Indigenous child’s community to the child and the prospective adoptive parent(s)
	Division 2 – Consents

s. 13 - Who must consent to adoption	- Adds requirement to obtain Indigenous governing body consent to proceed with the adoption of an Indigenous child in care
PART 3 – Court Proceedings	
s. 37 - Effect of adoption order	- Amends language to ensure an Indigenous child’s Indigenous rights are not affected by an adoption order
s. 46 - Custom adoptions	- Amends language to ensure recognition of customary adoptions
PART 5 – Openness and Disclosure	
s. 62 - Disclosure when an aboriginal child is under 19	- Clarifies the director’s responsibility to disclose Indigenous community information with Indigenous children and adoptive parents
PART 6 – Administrative and Legal Issues	
	Division 1 - Agreements Respecting the <i>Declaration on the Rights of Indigenous Peoples Act</i>
s. 74.1 - Definitions and interpretation for this Division	- Adds definitions for “decision-making agreement”, “statutory power”, “statutory power agreement”, and “statutory power of decision”
s. 74.2 - Agreements in relation to the Declaration on the Rights of Indigenous Peoples Act	- Adds provisions allowing for the negotiation and entering into of agreements between the Province and an Indigenous governing body - Aligns Part 6, Division 1 with the agreement framework set out in section 7 of the <i>Declaration on the Rights of Indigenous Peoples Act</i>
s. 74.3 - Required conditions	- Requires agreements under Part 6, Division 1 to include conditions on the use, disclosure and security of information
s. 74.4 - Effect of agreements	- Clarifies the effect of agreements made under Part 6, Division 1
	Division 2 - Other Administrative and Legal Issues

s. 76 – Minister's authority to make agreements	<ul style="list-style-type: none">- Amends/updates language- Expands the scope of Indigenous authorities with whom the minister is authorized to make agreements.
s. 79 - Immunity from legal proceedings	<ul style="list-style-type: none">- Clarifies immunity from legal proceedings for actions taken under the Act

Child, Family and Community Service Act, RSBC 1996, c 46

Table of Changes

<i>Section</i>	<i>Amendments</i>
PART 1 – Introductory Provisions	
s. 1 - Definitions and interpretation	<ul style="list-style-type: none"> - Adds definitions for “federal Act”, “Indigenous authority”, “Indigenous child and family services”, “Indigenous governing body” and “Indigenous law” - Amends the definitions of “director”, “First Nation child” and “Indigenous child” - Removes the definition of “First Nation land”
s. 3 – Service delivery principles	<ul style="list-style-type: none"> - Adds director’s obligation to consult and cooperate with Indigenous peoples and governing bodies in the planning and delivery of services to Indigenous children and families - Adds director’s obligation to plan and provide services in a manner that prevents discrimination and promotes substantive equality - Adds director’s obligation to provide services to Indigenous children and families in coordination with services provided by Indigenous authorities
PART 1.1 - Introductory Provisions Relating to Indigenous Laws and Indigenous Children	
s. 4.1 - Self-government principles	<ul style="list-style-type: none"> - Adds “self-government principles” - Affirms that Indigenous laws have the force of law in BC
s. 4.2 - Indigenous laws prevail in relation to Indigenous child and family services	<ul style="list-style-type: none"> - Grants paramountcy to Indigenous laws in circumstances where there is a conflict or inconsistency between the Act and an Indigenous law
s. 4.3 - Duties respecting Indigenous children	<ul style="list-style-type: none"> - Adds director’s obligation to confirm a child’s Indigenous identity, determine whether there is an Indigenous authority or law with jurisdiction respecting the child, defer to an Indigenous authority intending to

	provide services to the child, and to provide services consistent with an Indigenous law or any agreement between the Indigenous authority and the director
s. 4.4 - Considerations in relation to duties and the provision of services	<ul style="list-style-type: none"> - Clarifies that an Indigenous law cannot impose specific duties or restrictions on the director, or require that specific services be provided - Adds director's obligation to provide services to Indigenous children in a manner consistent with the federal Act and <i>Canadian Charter of Rights and Freedoms</i> (or to provide written reasons in circumstances where the director considers that it is not possible to act in accordance with applicable laws)
s. 4.5 - Disputes about application of Indigenous laws	<ul style="list-style-type: none"> - Adds director's obligation to ensure any disputes about the application of Indigenous laws does not disrupt services to a child - Adds director's obligation to consult and cooperate with Indigenous authorities to resolve disputes relating to the application of Indigenous laws
Part 3 – Child Protection	
	Division 1 – Responding to Reports
s. 13 - When protection is needed	- Clarifies that a child is not in need of protection solely on the basis of socioeconomic conditions
s. 14 - Duty to report need for protection	- Adds jurisdiction of Indigenous authorities to receive reports that an Indigenous child is in need of protection
s. 16 - Finding out if a child needs protection	<ul style="list-style-type: none"> - Adds director's obligation to determine whether to refer reports that an Indigenous child is in need of protection to an applicable Indigenous authority - Clarifies that an Indigenous authority must confirm its intention to assess and respond to the report on referral from the director
	Division 2 – Cooperative Planning and Dispute Resolution
s. 22(1) - Mediation or other alternative dispute resolution mechanisms	- Provides for mediation and alternative dispute resolution mechanisms if there is a dispute about the application of an Indigenous law
	Division 3 – How Children are Protected

s. 33.02 - Withdrawal of director due to Indigenous law	- Adds director's obligation, before or during a presentation hearing, to withdraw from a proceeding respecting an Indigenous child if there is an Indigenous authority intending to provide services to the child in accordance with an Indigenous law
s. 33.03 - Withdrawal notification	- Add director's obligation to provide notice to entitled parties of an Indigenous authority's intention to provide services to an Indigenous child in accordance with an Indigenous law
s. 33.04 - Application as to whether Indigenous law applies	- Adds procedure for an application for a court order that an Indigenous law does not apply to a child
s. 33.05 - Transition to Indigenous authority	- Adds notice and reporting procedures related to an application respecting the applicability of an Indigenous law
s. 33.06 - Cancellation of orders due to withdrawal	- Provides for the cancellation of interim, supervision, and temporary custody orders in circumstances where the director withdraws from a hearing or proceeding under Part 3, Division 3
	Division 4 – Child Protection Hearings and Orders
s. 48.1 - Withdrawal of director due to Indigenous law – after presentation hearing	- Adds director's obligation, after a presentation hearing, to withdraw from a proceeding respecting an Indigenous child if there is an Indigenous authority intending to provide services to the child in accordance with an Indigenous law
s. 48.2 - Withdrawal notice – after presentation hearing	- Add director's obligation to provide notice to entitled parties of an Indigenous authority's intention to provide services to an Indigenous child in accordance with an Indigenous law
s. 48.3 - Application as to whether Indigenous law applies – withdrawal after presentation hearing	- Adds procedure for an application for a court order that an Indigenous law does not apply to a child
s. 48.4 - Transition to Indigenous authority – withdrawal after presentation hearing	- Adds notice and reporting procedures related to an application respecting the applicability of an Indigenous law

s. 48.5 - Change of circumstances – withdrawal after presentation hearing	- Adds procedure allowing an Indigenous authority to apply for a court order related to an Indigenous law if there has been a significant change in circumstances since a previous court order was made under section 48.3
s. 48.6 - Cancellation of orders due to withdrawal – after presentation hearing	- Provides for the cancellation of interim, supervision, and temporary custody orders in circumstances where the director withdraws from a hearing or proceeding under Part 3, Division 4
	Division 5 – Continuing Custody Hearings and Orders
s. 50.01 - Planning for Indigenous child after continuing custody order	- Adds director's obligation to make all reasonable efforts to consult and collaborate on at least an annual basis with an Indigenous child's Indigenous community after a continuing custody order
s. 50.02 - Indigenous authority intention to have custody – continuing custody order	- Adds procedure for Indigenous authority intending to have custody, under an Indigenous law, of an Indigenous child who is under a continuing custody order
s. 50.03 - Application as to whether continuing custody order maintained	- Adds procedure for an application for a court order that an Indigenous law does not apply to a child under a continuing custody order
s. 50.04 - Transition to Indigenous authority having custody	- Adds notice and reporting procedures related to an application respecting the applicability of an Indigenous law
s. 50.05 - Change of circumstances – continuing custody order	- Adds procedure allowing an Indigenous authority to apply for a court order related to an Indigenous law if there has been a significant change in circumstances since a previous court order was made under section 50.03
s. 50.06 - Before placement of Indigenous child for adoption	- Adds director's obligation to make all reasonable efforts to consult and collaborate with an Indigenous child's Indigenous community prior to placing the child for adoption
s. 50.1 - Placement of child for adoption	- Adds requirement to obtain Indigenous governing body consent prior to the adoption of an Indigenous child

s. 50.2 - Dispensing with consent – Indigenous governing body	- Adds procedure for the director, or a child over 12 years old, to make an application dispensing with the consent of an Indigenous governing body
s. 51.1 - Role of Public Guardian and Trustee – Indigenous authority	- Allows an Indigenous authority to make an agreement with the Public Guardian and Trustee for the Public Guardian and Trustee to act as a property guardian for an Indigenous child
PART 5 – Freedom of Information and Protection of Privacy	
s. 79.2 - Disclosing information to Indigenous authority	- Adds requirement to disclose information to an Indigenous authority where it is necessary for the provision of services to an Indigenous child
PART 7 - Administration	
	Division 1 – Agreements Respecting the <i>Declaration on the Rights of Indigenous Peoples Act</i>
s. 89.1 - Definitions and interpretation for this Division	- Adds definitions for “decision-making agreement”, “statutory power”, “statutory power agreement”, and “statutory power of decision”
s. 89.2 - Agreements in relation to the <i>Declaration on the Rights of Indigenous Peoples Act</i>	- Adds provisions allowing for the negotiation and entering into of agreements between the Province and an Indigenous governing body - Aligns Part 7, Division 1 with the agreement framework set out in section 7 of the <i>Declaration on the Rights of Indigenous Peoples Act</i>
s. 89.3 - Required conditions	- Requires agreements under Part 7, Division 1 to include conditions on the use, disclosure and security of information
s. 89.4 - Effect of agreements	- Clarifies the effect of agreements made under Part 7, Division 1
	Division 2 – Other Authorities for Minister’s Agreements
s. 90- Minister's authority to enter into agreements	- Amends/updates language - Expands the scope of Indigenous authorities with whom the minister is authorized to make agreements.

	Division 3 - Agreements Relating to the Nisx'a Nation and Treaty First Nations
90.2 - Definitions for this Division	- Adds definitions for “amending agreement” and “enabling agreement”
90.3 - Purpose for this Division	- Clarifies purpose of Part 7, Division 3 is to enable Nisx'a Nation and Treaty First Nations to exercise law-making authority related to child and family services
90.4 - Negotiation	- Adds director’s obligation to negotiate an agreement under Part 7, Division 3 once a request to do so is made by Nisx'a Nation or a Treaty First Nation
90.5 - Indigenous laws – force of law	- Clarifies an Indigenous law of Nisx'a Nation or a Treaty First Nations has the force of law in BC
90.6 - Effective date	- Clarifies the date at which a law made under Part 7, Division 3 may be exercised
90.7 - No limit on lawmaking	- Clarifies that Part 7, Division 3 does not limit or otherwise affect the law-making authority provided for under the Nisx'a Final Agreement or the final agreement of a Treaty First Nation
90.8 - Conflict or inconsistency	- Clarifies that laws and agreements under Part 7, Division 3 apply even if there is a conflict or inconsistency with the Nisx'a Final Agreement or the final agreement of a Treaty First Nation
	Division 4 – Matters Relating to Directors
s. 91.1 - Designation of Provincial Director of Child Welfare	- Clarifies the designation and role of the Provincial Director of Child Welfare
s. 91.2 - Designation of Indigenous Child Welfare Director	- Adds the role of Indigenous Child Welfare Director, with the same scope of authority as the Provincial Director of Child Welfare and an additional responsibility for providing advice and guidance to other directors respecting services to Indigenous children and families
PART 8 – Miscellaneous Provisions	
s. 99.1- Provincial Court jurisdiction – dispute resolution	- Limits the Provincial Court’s jurisdiction relating to an Indigenous law to circumstances where the Indigenous law explicitly provides for the Court’s jurisdiction

s. 101- Immunity from legal proceedings	- Clarifies immunity from legal proceedings for actions taken under the Act
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Infants Act, RSBC 1996, c 223	
Table of Changes	

<i>Section</i>	<i>Amendments</i>
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PART 1 –Duties and Obligations of Public Guardian and Trustee	
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s. 16	- Ensures Indigenous children in the care of an Indigenous authority have the same rights with respect to having the Public Guardian and Trustee act as their property guardian as do children who are in government care
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Public Guardian and Trustee Act, RSBC 1996, c 383	
Table of Changes	

<i>Section</i>	<i>Amendments</i>
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PART 2 – Powers, Duties, Functions and Liability	
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s. 7.1	- Ensures Indigenous children in the care of an Indigenous authority have the same rights with respect to having the Public Guardian and Trustee act as their property guardian as do children who are in government care
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APPENDIX A

Proposed Amendments to the *Adoption Act*, RSBC 1996, c 5

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Section 1 - Definitions and interpretation

1 (1) In this Act:

"**administrator**" means the chief executive officer of an adoption agency or another officer of an adoption agency designated by the agency for the purposes of this Act;

"**adoption agency**" means a society licensed in accordance with the regulations;

"**birth mother**" means the person who gives birth to, or is delivered of, a child, regardless of whether her human reproductive material was used in the child's conception, unless the person is a surrogate within the meaning of section 29 of the Family Law Act;

"**caregiver**" means a person with whom a child is placed by a director or an administrator and who, by agreement with the director or the administrator, is authorized to carry out the rights and responsibilities, under the agreement, of the director or the administrator;

"**child**" means an unmarried person under 19 years of age;

"**Convention**" means the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption;

"**court**" means the Supreme Court of British Columbia;

"**designated representative**", when used in relation to the Nisga'a Lisims Government, a First nation, an Indigenous community or a Treaty First Nation, means a representative designated in accordance with the regulations;

"**direct placement**" means the action of a parent or other guardian of a child placing the child for adoption with one or 2 adults, none of whom is a relative of the child;

"**director**" means a person designated as a director of adoption under section 76.1 (1) (a) and the Provincial director;

"**director of child protection**" means a director designated under section 91 of the Child, Family and Community Service Act;

"**extraprovincial agency**" means an official or agency located outside British Columbia and having substantially similar powers as a director in respect of guardianship;

“First Nations child” means a child

- (a) who is a member or entitled to be a member of a First Nation, or
- (b) who a First Nation confirms, by advising the director or an

adoption agency, is a child belonging to the First Nation;

“Indigenous child” means a child

- (a) who is a First Nation child,
- (b) who is a Nis×a’a child,
- (c) who is a Treaty First Nation child,
- (d) who is under 12 years of age and has a biological parent who
 - (i) is of Indigenous ancestry, including Métis and Inuit, and
 - (ii) considers himself or herself to be an Indigenous person,
- (e) who is 12 years of age or over, of Indigenous ancestry,

including Métis and Inuit, and considers himself or herself to be an Indigenous person, or

(f) who an Indigenous community confirms, by advising the director or an adoption agency, is a child belonging to the Indigenous community;

“Indigenous community information”, in relation to an Indigenous community to which an Indigenous child belongs, means the following information:

(a) if the child is a First Nation child, the name and location of the First Nation;

(b) if the child is a Nis×a’a child, the location of the Nis×a’a Nation or the child’s Nis×a’a Village;

(c) if the child is a Treaty First Nation child, the name and location of the Treaty First Nation;

(d) if the child is not a First Nation child, a Nis×a’a child nor a Treaty First Nation child, the name and location of the child’s Indigenous community;

“Indigenous governing body” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*,

“Indigenous peoples” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*,

“openness agreement” means an agreement made under section 59;

"**parents' registry**" means the registry referred to in section 10;

"**post-placement report**" means a report to court prepared by a director or an adoption agency;

"**Provincial director**" means the person designated as the Provincial director under section 76.1 (1) (b);

"**registrar general**" has the same meaning as in the Vital Statistics Act;

"**relative**", subject to subsection (3) of this section, means a person

(a) who is related to another by birth or adoption, or

(b) who, in the case of an Indigenous child, is considered to be a relative by the child or by the child's Indigenous community in accordance with that community's customs, traditions or customary adoption practices;

"**Treaty First Nation**", in relation to a Treaty First Nation child, means the Treaty First Nation of which the child is a Treaty First Nation child; and,

(2) A reference to "guardian" in section 13 (1) (c) or in the phrase "parent or other guardian" or "joint guardian" does not include

(a) a director,

(b) an administrator,

(c) a director of child protection, or

(d) the Public Guardian and Trustee.

(3) In the following sections, paragraph (b) of the definition of "relative" does not apply:

(a) section 68 (b);

(b) section 70.2 (1) (a) (ii) and (2) (b) (i).

Section 3 - Best interests of child

3 (1) All relevant factors must be considered in determining the child's best interests, including for example:

(a) the child's safety;

(b) the child's physical and emotional needs and level of development;

(c) the importance of continuity in the child's care;

- (d) the importance to the child's development of having a positive relationship with a parent and a secure place as a member of a family;
- (e) the quality of the relationship the child has with a parent or other individual and the effect of maintaining that relationship;
- (f) the child's cultural, racial, linguistic and religious heritage;
- (g) the child's views and preferences, without discrimination, including discrimination relating to Indigenous identity, race, colour, ancestry, place of origin, religion, family status, physical or mental disability, sex, sexual orientation and gender identity or expression;
- (h) the effect on the child if there is delay in making a decision.

Section 3.1 - Best interests of child – Indigenous children

3.1 (1) If the child is an Indigenous child, in addition to the relevant factors that must be considered under section 3 (1), the following factors must be considered in determining the child's best interests:

- (a) cultural continuity, including the transmission of languages, cultures, practices, customs, traditions, ceremonies and knowledge of the child's Indigenous community;
- (b) the development of the child's Indigenous cultural identity, including the child being able to practise the child's Indigenous traditions, customs and language;
- (c) the preservation of the child's connections to the child's Indigenous community and the region where the child's family and Indigenous community is located;
- (d) the child being connected to family;
- (e) any plans for the child's care, including care in accordance with the customs and traditions of the child's Indigenous community.

(2) In this section, "family", in relation to an Indigenous child, includes the child's relatives.

Section 3.2 - Self-government principle

3.2 This Act, to the extent the provisions of this Act relate to the adoption of Indigenous children

- (a) who are in the continuing custody of the director of child protection, or
- (b) in respect of whom the director of child protection is the personal guardian under section 51 of the Infants Act,

must be interpreted and administered in accordance with the principle that Indigenous peoples have an inherent right of self-government, including self-determination, that is recognized and affirmed by section 35 of the *Constitution Act, 1982* and by the *United Nations Declaration on the Rights of Indigenous Peoples*.

Section 6 - Before placement by a director or an adoption agency

6 (1) Before placing a child for adoption, a director or an adoption agency must

- (a) provide information about adoption and the alternatives to adoption to the parent or other guardian requesting placement,
- (b) if the parent or other guardian requesting placement wishes to select the child's prospective adoptive parents, provide the parent or other guardian with information about prospective adoptive parents who have been approved on the basis of a homestudy completed in accordance with the regulations,
- (c) obtain as much information as possible about the medical and social history of the child's biological family and preserve the information for the child,
- (d) give the prospective adoptive parents information about the medical and social history of the child's biological family,
- (e) make sure that the child,
 - (i) if sufficiently mature, has been counselled about the effects of adoption, and
 - (ii) if 12 years of age or over, has been informed about the right to consent to the adoption,
- (f) make reasonable efforts to obtain any consents required under section 13,

- (g) make reasonable efforts to give notice of the proposed adoption to
 - (i) anyone who is named by the birth mother as the child's biological father if his consent is not required under section 13, and
 - (ii) anyone who is registered under section 10 in the parents' registry in respect of the proposed adoption; and
- (h) make all reasonable efforts, if the child is an Indigenous child,
 - (i) to obtain information about the Indigenous cultural identity of the child, and
 - (ii) to preserve the information for the child

(1.1) Before placing an Indigenous child for adoption, in addition to the requirements under subsection (1), the director or the adoption agency must give the applicable Indigenous community information, if known, to the following:

- (a) the child, if sufficiently mature;
- (b) the prospective adoptive parents.

(2) A director or an adoption agency may only place a child for adoption with prospective adoptive parents who have been approved to receive placement of a child

(a) on the basis of a homestudy completed in accordance with the regulations, if the prospective adoptive parents reside in British Columbia, or

(b) in accordance with the laws of the jurisdiction in which the prospective adoptive parents reside, if they reside outside British Columbia.

(3) Subsection (1) (a), (b) and (g) does not apply to a director placing a child for adoption under section 4 (2).

Section 7 - Before placement of Indigenous child for adoption

7 (1) Before placing an Indigenous child for adoption, a director or an adoption agency must make all reasonable efforts to consult and cooperate with the following, as applicable:

(a) if the child is a First Nation child, a designated representative of the First Nation;

- (b) if the child is a Nisxa'a child, a designated representative of the Nisxa'a Lisims Government;
 - (c) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;
 - (d) if the child is not a First Nation child, a Nisxa'a child nor a Treaty First Nation child, a designated representative of an Indigenous community that has been identified by
 - (i) the child, if 12 years of age or over, or
 - (ii) a parent of the child, if the child is under 12 years of age;
 - (e) any other applicable Indigenous governing body.
- (2) Subsection (1) does not apply in relation to an Indigenous child
- (a) who is in the continuing custody of the director of child protection, or
 - (b) in respect of whom the director of child protection is the personal guardian under section 51 of the *Infants Act*.

Section 8 - Before a direct placement

8 (1) As soon as possible before a direct placement, the prospective adoptive parents must notify a director or an adoption agency, in accordance with the regulations, of their intent to receive a child in their home for adoption.

(2) As soon as possible after being notified under subsection (1), a director or the adoption agency must

- (a) provide information about adoption and the alternatives to adoption to the parent or other guardian proposing to place the child,
- (b) obtain as much information as possible about the medical and social history of the child's biological family and preserve the information for the child,
- (c) give the prospective adoptive parents information about the medical and social history of the child's biological family,
- (d) prepare, in accordance with the regulations, a pre-placement assessment of the prospective adoptive parents,
- (e) give a copy of the pre-placement assessment to the prospective adoptive parents and to the parent or other guardian of the child, and
- (f) make sure that the child,

(i) if sufficiently mature, has been counselled about the effects of adoption, and

(ii) if 12 years of age or over, has been informed about the right to consent to the adoption.

(3) If the child being placed is an Indigenous child, in addition to the requirements under subsection (2), the director or the adoption agency must give the applicable Indigenous community information, if known, to the following:

- (a) the child, if sufficiently mature;
- (b) the prospective adoptive parents.

Section 13 - Who must consent to adoption

13 (1) The consent of each of the following is required for a child's adoption:

- (a) the child, if 12 years of age or over;
- (b) the child's parents;
- (c) the child's guardians.
- (d) [Repealed 2011-25-268.]

(2) Despite subsection (1) (b), the consent of a biological father who is not presumed to be the child's biological father under section 26 of the Family Law Act is not required unless the biological father

- (a) acknowledges that he is the child's father, and
- (b) is named by the child's birth mother as the child's father.

(3) If the child is in the continuing custody of a director of child protection, or a director of child protection is the child's personal guardian under section 51 of the Infants Act, the only consents required are

- (a) the director of child protection's consent,
- (b) the child's consent, if the child is 12 years of age or over, and
- (c) in the case of an Indigenous child, the consent of the applicable

Indigenous governing body.

(4) If a child who has been adopted is to be adopted again, the consent of a person who became a parent at the time of the previous adoption is required, instead of the consent of a person who ceased to have any parental rights and responsibilities at that time.

(5) Subject to subsection (6), if a child has been placed for adoption by an extraprovincial agency and the law of the jurisdiction in which the agency is located is that only the consent of the agency is required for the child's adoption, that consent and any consent required of the child under subsection (1) are the only consents required.

(6) If an Indigenous child has been placed for adoption by an extraprovincial agency, the following consents are required:

- (a) the consent of that agency;
- (b) any consent required of the child under subsection (1);
- (c) the consent of the applicable Indigenous governing body.

Section 62 - Disclosure when an aboriginal Indigenous child is under 19

(1) If Indigenous community information was not provided to an Indigenous child or a prospective adoptive parent under section 6 or 8, after the adoption of the child, a director or an adoption agency must make all reasonable efforts to disclose, if in the child's best interests, the applicable Indigenous community information to the following:

- (a) the child, if sufficiently mature;
- (b) the adoptive parent.

(2) A director may, in a child's best interests and with the written consent of the child's adoptive parents, disclose identifying information so that an Indigenous child can be contacted by the following:

(a) if the child is registered or entitled to be registered as a member of an First Nation, by a designated representative of the ~~band~~ First Nation;

(a.1) if the child is a Nisga'a child, by a designated representative of the Nisga'a Lisims Government;

(a.2) if the child is a Treaty First Nation child, by a designated representative of the Treaty First Nation;

(b) if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, by a designated representative of an Indigenous community that has been identified

- (i) by the child, if 12 years of age or over, or

(ii) by a pre-adoption parent of the child, if the child is under 12 years of age.

(3) In exercising his or her power under subsection (2), the director may dispense with any consent required by this section if the adoption has broken down or it is not practical to obtain consent.

DIVISION 1 – Agreements Respecting the Declaration on the Rights of Indigenous Peoples Act

Section 74.1 - Definitions and interpretation for this Division

74.1 In this Division and section 79:

“decision-making agreement” means an agreement negotiated and entered into under section 7 of the *Declaration on the Rights of Indigenous Peoples Act* relating to statutory powers of decision under this Act;

“statutory power” has the same meaning as in section 1 of the *Judicial Review Procedure Act*, but does not include a power or right conferred by this Act to exercise a statutory power of decision;

“statutory power agreement” means an agreement entered into under section 6 of the *Declaration on the Rights of Indigenous Peoples Act* relating to one or both of the following:

- (a) the exercise of a statutory power under this Act jointly by
 - (i) the Indigenous governing body, and
 - (ii) the director, an adoption agency or another decision-maker;
- (b) the consent of an Indigenous governing body before the exercise of a statutory power under this Act;

“statutory power of decision” has the same meaning as in section 1 of the *Judicial Review Procedure Act*.

Section 74.2 - Agreements in relation to the Declaration on the Rights of Indigenous Peoples Act

74.2 (1) For the purposes of this Act, a statutory power agreement may only be entered into in accordance with subsections (2) and (3).

(2) For the purposes of this Act, the Lieutenant Governor in Council may authorize the minister, on behalf of the government, to negotiate and enter into a statutory power agreement with an Indigenous governing body.

(3) Section 7 (2) to (5) of the *Declaration on the Rights of Indigenous Peoples Act* applies to a statutory power agreement.

(4) A single agreement may contain both a decision-making agreement and a statutory power agreement.

Section 74.3 - Required conditions

74.3 A decision-making agreement or a statutory power agreement must include conditions on the use, disclosure and security of information that is provided under the agreement to an Indigenous governing body.

Section 74.4 - Effect of agreements

74.4 If a decision-making agreement or a statutory power agreement has been entered into,

(a) the statutory power of decision or the statutory power, as applicable, must be exercised in accordance with the agreement,

(b) a reference under this Act to that statutory power of decision or that statutory power is to be read as a reference to the statutory power of decision or the statutory power as made in accordance with the agreement, and

(c) the following terms of an agreement have the force of law:

(i) terms identifying the person who is carrying out the exercise of, or providing consent in relation to, a statutory power of decision or a statutory power in accordance with an agreement;

(ii) terms relating to the criteria or procedures for the exercise of, or consent in relation to, a statutory power of decision or a statutory power in accordance with an agreement.

Section 76 - Minister's authority to make agreements

76 For the purposes of this Act, the minister may make an agreement with any of the following:

(a) a First Nation;

(a.1) the Nisga'a Nation or a Nisga'a Village;

(a.2) a Treaty First Nation;

(a.3) a legal entity representing an Indigenous community;

(a.4) any Indigenous governing body not described in paragraphs (a),

(a.1), (a.2) and (a.3);

(b) the government of Canada, the government of a province of Canada or the government of a jurisdiction outside Canada, or an official or agency of those governments;

(c) Community Living British Columbia established under the *Community Living Authority Act*;

(d) any other person or persons.

APPENDIX B

Proposed Amendments to the

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Section 1: Definitions and interpretation

1(1) In this Act:

"**care**", when used in relation to the care of a child by a director or another person, means physical care and control of the child;

"**caregiver**" means a person with whom a child is placed by a director and who, by agreement with the director, is authorized to carry out the rights and responsibilities, under the agreement, of the director;

"**child**" means a person under 19 years of age and includes a youth;

"**child in care**" means a child who is in the custody, care or guardianship of a director or a director of adoption;

"**continuing custody order**" means an order under section 41 (1) (d), 42.2 (4) (d) or (7) or 49 (4), (5) or (10) (a) placing a child in the continuing custody of a director;

"**court**" means the Provincial Court except where this Act provides otherwise;

"**custody**" includes care and guardianship of a child;

"**designated representative**", when used in relation to a First Nation, the Nisga'a Lisims Government, a Treaty First Nation or another Indigenous community, means a representative designated in accordance with the regulations;

"**director**" means a person designated by the minister under section 91, 91.1 or 91.2;

"**director of adoption**" means a person designated by the minister under the *Adoption Act* as a director of adoption;

"dwelling" means all or part of any premises, vehicle or vessel that is kept or occupied as a permanent or temporary residence;

"family conference" means a conference convened under section 20;

"family conference coordinator" means a person designated by a director for the purpose of convening family conferences;

"federal Act" means *An Act respecting First Nations, Inuit and Métis children, youth and families* (Canada);

"First Nation child" means a child

(a) who is a member or is entitled to be a member of a First Nation,

or

(b) who an Indigenous authority confirms, by advising the director, is a child belonging to a First Nation;

"former Act" means the *Family and Child Service Act*, S.B.C. 1980, c. 11;

"guardianship" includes all the rights, duties and responsibilities of a parent;

"health care" means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care;

"health care provider" includes a person licensed, certified or registered in British Columbia or in another province or state to provide health care;

"Indigenous authority" means a body or entity, including an Indigenous governing body, that is authorized by an Indigenous governing body to provide Indigenous child and family services under Indigenous law;

"Indigenous child" means a child

(a) who is a First Nation child,

(b) who is a Nis×a'a child,

(c) who is a Treaty First Nation child,

(d) who is under 12 years of age and has a biological parent who

(i) is of Indigenous ancestry, including Métis and Inuit, and

(ii) considers himself or herself to be an Indigenous person,

(e) who is 12 years of age or over, of Indigenous ancestry,

including Métis and Inuit, and considers himself or herself to be an Indigenous person, or

(f) who the Indigenous authority confirms, by advising the director, is a child belonging to the Indigenous community;

“Indigenous child and family services” means services provided by an Indigenous authority to support Indigenous children and families, including prevention services, early intervention services and child protection services;

“Indigenous governing body” has the same meaning as in the *Declaration on the Rights of Indigenous Peoples Act*;

“Indigenous law” means a law in relation to Indigenous child and family services that is made in respect of Indigenous children and families by an Indigenous governing body in accordance with the law-making authority of the Indigenous governing body;

"interim order" means an order made under section 28 (5.1), 33.2 (2), 35 (2) (a), (b) or (d), 36 (3) (a) or (b), 42.1 (6) or 98 (7.1);

"parent" includes

(a) a person to whom guardianship or custody of a child has been granted by a court of competent jurisdiction or by an agreement,

and

(b) a person with whom a child resides and who stands in place of the child's parent or guardian,

but does not include a caregiver, prospective adoptive parent or director;

"place of confinement" means

(a) a correctional centre, youth custody centre or other lawful place of confinement, or

(b) a Provincial mental health facility or psychiatric unit under the *Mental Health Act*;

"plan for independence" means a plan relating to a youth that

(a) contains the information required under section 12.2, and

(b) is prepared in accordance with the regulations;

"plan of care" means a plan relating to a child that

(a) contains the information required under the regulations, and

(b) is prepared in accordance with the regulations;

"police officer" means a person who

(a) under the *Police Act* is a provincial constable or municipal constable or has the powers of a provincial constable or municipal constable, or

(b) is a member of the military police of the Canadian Armed Forces;

"presentation hearing" means a hearing that a director is required by section 33.1 (1), 34 (1), 36 (2) (b) or 42.1 (1) to attend;

"prospective adoptive parent" means a person with whom a child is placed for adoption under section 4 (2) of the *Adoption Act* and who, by agreement with a director, is authorized to carry out the rights and responsibilities, under the agreement, of the director;

"protective intervention order" means an order made under section 28;

"remove" means to take a child into the care of a director under section 30, 36 or 42;

"residential service" means accommodation and associated supervision provided for a child in a foster home or other place away from the home of the child's parent;

"restraining order" means an order made under section 98;

"supervision order" means an order made under section 33.2 (2), 35 (2) (b) or (d), 36 (3) (b) (i), 41 (1) (a) or (b), (1.1) or (2.1), 42.2 (4) (a) or (c), 46 (3), 49 (8) or 54.01 (10) requiring a director to supervise a child's care, and includes any extension of or change to that order;

"temporary custody order" means an order made under section 41 (1) (b) or (c), 42.2 (4) (b) or (c), 49 (7) (b) or (c) or 54.01 (9) (b) or (c) placing a child for a specified period in the custody of a director or another person, and includes any extension of or change to that order;

"Treaty First Nation", in relation to a Treaty First Nation child, means the Treaty First Nation of which the child is a Treaty First Nation child;

"youth" means a person who is 16 years of age or over but is under 19 years of age.

(2) A reference in this Act to an order made under a provision of this Act includes a reference to the corresponding order made by consent under section 60.

Section 3 - Service delivery principles

3 The following principles apply to the provision of services under this Act:

(a) families and children should be informed of the services available to them and encouraged to participate in decisions that affect them;

(b) in the planning and delivery of services to Indigenous children and families, there should be consultation and cooperation with Indigenous peoples and Indigenous governing bodies;

(b.1) services should be planned and provided in ways that prevent discrimination prohibited by the *Human Rights Code* and that promote substantive equality, respect for rights and culture and, in the case of Indigenous children, cultural continuity;

(c) services should be planned and provided in ways that are sensitive to the needs and the cultural, racial and religious heritage of those receiving the services;

(c.1) the impact of residential schools on Indigenous children, families and communities should be considered in the planning and delivery of services to Indigenous children and families;

(d) services should be integrated, wherever possible and appropriate, with services provided by government ministries, community agencies and

Community Living British Columbia established under the *Community Living Authority Act*,

(d.1) services to Indigenous children and families should be provided in a coordinated manner with services provided by Indigenous authorities;

(e) the community should be involved, wherever possible and appropriate, in the planning and delivery of services, including preventive and support services to families and children.

PART 1.1 - Introductory Provisions Relating to Indigenous Laws and Indigenous Children

Section 4.1 - Self-government principles

4.1 This Act must be interpreted and administered in accordance with the following principles:

(a) Indigenous peoples have an inherent right of self-government, including self-determination, that is recognized and affirmed by section 35 of the *Constitution Act, 1982* and by the *United Nations Declaration on the Rights of Indigenous Peoples*;

(b) the inherent right of self-government includes jurisdiction in relation to Indigenous child and family services, law-making authority in relation to those services and authority to administer and enforce laws made under that law-making authority;

(c) Indigenous laws have the force of law in British Columbia.

Section 4.2 - Indigenous laws prevail in relation to Indigenous child and family services

4.2 Subject to sections 4.3 (4) and 4.4 (1) and (2), if there is a conflict or inconsistency between this Act and an Indigenous law in a circumstance where an Indigenous authority is providing, or intending to provide, Indigenous child and family services under the Indigenous law, the Indigenous law prevails to the extent of the conflict or inconsistency.

Section 4.3 - Duties respecting Indigenous children

4.3 (1) When performing duties and exercising powers under this Act, a director must promptly take all reasonable steps to confirm whether a child is an Indigenous child.

(2) If a child is an Indigenous child, a director must promptly take all reasonable steps to obtain information about and confirm whether there is

(a) an Indigenous authority with jurisdiction for Indigenous child and family services in relation to the child, and

(b) an applicable Indigenous law in relation to the child.

(3) If there is an applicable Indigenous law in relation to an Indigenous child, a director must promptly take steps when an Indigenous authority is to provide Indigenous child and family services in relation to the child, including by

(a) referring a report in accordance with section 16,

(b) withdrawing from a proceeding in accordance with section 33.05, or

(c) proceeding in accordance with section 50.02.

(4) If a director provides services under this Act in relation to an Indigenous child to whom an Indigenous law applies, the director must provide the services as follows:

(a) subject to section 4.4 (2) and (3), in a manner that is consistent with the Indigenous law,

(i) if the Indigenous law is provided in writing to the director, or

(ii) if the Indigenous law is not provided in writing to the director, in accordance with an applicable agreement referred to in paragraph (b) of this subsection;

(b) in accordance with an applicable agreement

(i) entered into under this Act, or

(ii) referred to in Division 1 of Part 7.

Section 4.4 - Considerations in relation to duties and the provision of services

4.4 (1) An Indigenous law does not have the effect of imposing specific duties or restrictions on a director, or requiring that specific services be provided or not provided by a director, unless an applicable agreement referred to in section 4.3

(4) (b) has that effect.

(2) When providing services in a manner described in section 4.3 (4) (a), a director remains subject to this Act and must act in accordance with applicable laws, including the federal Act and the *Canadian Charter of Rights and Freedoms*.

(3) If a director considers that it is not possible to act in accordance with applicable laws as described in subsection (2), the director must notify the relevant Indigenous authority and, if requested by the Indigenous authority, provide written reasons to the Indigenous authority.

Section 4.5 - Disputes about application of Indigenous laws

4.5 In the event of a dispute under this Act about the application of an Indigenous law or whether a director may provide a service in a manner that is consistent with an Indigenous law,

(a) a director must ensure that the dispute does not disrupt the provision of services under this Act while the dispute is being resolved, and

(b) the director must consult and cooperate with Indigenous authorities to resolve the dispute in a timely manner and must give due consideration to the Indigenous laws, or the Indigenous customs, practices and traditions, of the Indigenous peoples or communities.

Section 13 - When protection is needed

13 (1) A child needs protection in the following circumstances:

(a) if the child has been, or is likely to be, physically harmed by the child's parent;

(b) if the child has been, or is likely to be, sexually abused or exploited by the child's parent;

(c) if the child has been, or is likely to be, physically harmed, sexually abused or sexually exploited by another person and if the child's parent is unwilling or unable to protect the child;

(d) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent;

(e) if the child is emotionally harmed by

(i) the parent's conduct, or

(ii) living in a situation where there is domestic violence by or towards a person with whom the child resides;

(f) if the child is deprived of necessary health care;

(g) if the child's development is likely to be seriously impaired by a treatable condition and the child's parent refuses to provide or consent to treatment;

(h) if the child's parent is unable or unwilling to care for the child and has not made adequate provision for the child's care;

(i) if the child is or has been absent from home in circumstances that endanger the child's safety or well-being;

(j) if the child's parent is dead and adequate provision has not been made for the child's care;

(k) if the child has been abandoned and adequate provision has not been made for the child's care;

(l) if the child is in the care of a director or another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force.

(1.1) For the purpose of subsection (1) (b) and (c) but without limiting the meaning of "sexually abused" or "sexually exploited", a child has been or is likely to be sexually abused or sexually exploited if the child has been, or is likely to be,

(a) encouraged or helped to engage in prostitution, or

(b) coerced or inveigled into engaging in prostitution.

(1.2) For the purpose of subsection (1) (a) and (c) but without limiting the circumstances that may increase the likelihood of physical harm to a child, the likelihood of physical harm to a child increases when the child is living in a situation where there is domestic violence by or towards a person with whom the child resides.

(2) For the purpose of subsection (1) (e), a child is emotionally harmed if the child demonstrates severe

(a) anxiety,

(b) depression,

(c) withdrawal, or

(d) self-destructive or aggressive behaviour.

(3) For certainty, a child does not need protection in the circumstances described in subsection (1) (d) or (h) solely on the basis of socioeconomic conditions, including the following:

(a) poverty;

(b) the lack of adequate housing or infrastructure;

(c) the state of health of a parent of the child.

Section 14 - Duty to report need for protection

14 (1) Subject to subsection (1.1), a person who has reason to believe that a child, including an Indigenous child, needs protection under section 13 must promptly report the matter to a director or a person designated by a director.

(1.1) A person who has reason to believe that an Indigenous child needs protection under section 13 and who reports the matter to an Indigenous authority is not required to report the matter to a director, or a person designated by a director, under subsection (1) if the Indigenous authority confirms to the person that the Indigenous authority will assess the information in the report.

(2) Subsection (1) applies even if the information on which the belief is based

(a) is privileged, except as a result of a solicitor-client relationship, or

(b) is confidential and its disclosure is prohibited under another Act.

(3) A person who contravenes subsection (1) commits an offence.

(4) A person who knowingly reports to a director, or a person designated by a director, false information that a child needs protection commits an offence.

(5) No action for damages may be brought against a person for reporting information under this section unless the person knowingly reported false information.

(6) A person who commits an offence under this section is liable to a fine of up to \$10 000 or to imprisonment for up to 6 months, or to both.

(7) The limitation period governing the commencement of a proceeding under the *Offence Act* does not apply to a proceeding relating to an offence under this section.

Section 16 - Finding out if a child needs protection

16 (1) On receiving a report about a child under section 14, 15 or 27, a director must determine whether to refer the report

(a) to another director, or

(b) if the child is an Indigenous child, to an applicable Indigenous authority.

(1.1) The director must not make a determination to refer the report as set out in subsection (1) (b) unless the Indigenous authority confirms that Indigenous law applies to the child and that the Indigenous authority will assess the information in the report.

(1.2) If the director makes a determination to refer the report as set out in subsection (1),

(a) the director must refer the report promptly,

(b) in the case of a referral to another director, the other director must assess the information in the report, and

(c) in the case of a referral to an Indigenous authority, the director must inform the person who made the report that the report has been referred to the Indigenous authority,

(1.3) If the director refers the report as set out in subsection (1) (b), the director ceases to have the obligation to assess the information in the report.

(1.4) If the director makes a determination under subsection (1) not to refer the report, the director must assess the information in the report.

(2) After the assessment under subsection (1.2) (b) or (1.4), the director may

(a) offer support services and agreements to the child and family,

(b) refer the child and family to any of the following:

(i) a community agency;

(ii) in the case of an Indigenous child, an Indigenous authority, or

(A) if the child is a First Nation child, the First Nation,

(B) if the child is a Nis×a'a child, the Nis×a'a Nation,

(C) if the child is a Treaty First Nation child, the Treaty First Nation, or

(D) if the child is not a First Nation child, a Nis×a'a child nor a Treaty First Nation child, the child's Indigenous community;

(iii) any person the director considers appropriate,

(b.1) conduct an assessment of the family respecting

(i) the child's safety, and

(ii) whether it is necessary to provide to the family available

services to

(A) support and assist the family to care for the child, and

(B) make the family safe for the child,

(c) investigate the child's need for protection, or

(d) refer the report, in the case of an Indigenous child, to the applicable Indigenous authority.

(2.1) The director must not refer the report to an Indigenous authority as set out in subsection (2) (d) unless the Indigenous authority confirms that

(a) an Indigenous law applies to the child, and

(b) the Indigenous authority will assess the information in the report.

(2.2) If the director refers the report to an Indigenous authority as set out in subsection (2) (d), the director must inform the person who made the report that the director has referred the report to the Indigenous authority.

(2.3) If the director refers the report as set out in subsection (2) (d), the director ceases, with respect to the report, to have the obligation to commence, continue or conclude an assessment as set out in subsection (2) (b.1) or an investigation as set out in subsection (2) (c), as applicable.

(2.4) If a director makes an agreement under section 92.1 (2) (a) (ii) or (iii) with a First Nation, the Nisga'a Nation, a Treaty First Nation or a legal entity representing another Indigenous community, the director must, with respect to an Indigenous child of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community, conduct an assessment under subsection (2) (b.1) of this section or investigate under subsection (2) (c) of this section in accordance with the agreement.

(3) The director must make all reasonable efforts to report the result of the assessment under subsection (2) (b.1) or investigation under subsection (2) (c) to

(a) the parent apparently entitled to custody of the child,

(b) the person who reported the information that led to the assessment or investigation,

(b.1) if the director conducts the assessment or investigates as set out in subsection (2.4) of this section, the First Nation, Nisga'a Nation, Treaty First Nation or legal entity representing the Indigenous community who is a party to the agreement made under section 92.1 (2) (a) (ii) or (iii), and

(c) any other person or community agency if the director determines this is necessary to ensure the child's safety or well-being.

(4) In addition, the director may report the result of the assessment or investigation to the child if he or she is capable of understanding the information.

(5) Subsections (3) and (4) do not apply

(a) if reporting the result of the assessment or investigation would, in the opinion of the director, cause physical or emotional harm to any person or endanger the child's safety, or

(b) if a criminal investigation into the matter is underway or contemplated.

Section 22 - Mediation or other alternative dispute resolution mechanisms

22(1) If a director and any person are unable to resolve an issue relating to the child or a plan of care, the director and the person may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the issue.

(2) If a person and any other person, including a director or an Indigenous authority, are unable to resolve a dispute about whether an Indigenous law applies to a matter under this Act, the persons may agree to mediation or other alternative dispute resolution mechanisms as a means of resolving the dispute.

Section 33.02 - Withdrawal of director due to Indigenous law

33.02 Before a presentation hearing, or before the conclusion of a presentation hearing, relating to the removal of a child under section 30, 36 or 42, the director must withdraw from a proceeding in accordance with sections 33.03 to 33.05 if

(a) the child is an Indigenous child,

(b) an Indigenous authority provides to the director

(i) a written confirmation that the Indigenous authority is or will be providing Indigenous child and family services in accordance with an Indigenous law, and

(ii) a written request that the director withdraw, and

(c) in the event that an application is made under section 33.04, the court orders that the Indigenous law applies.

Section 33.03 - Withdrawal notification

33.03 (1) If the director receives a confirmation and request from an Indigenous authority under section 33.02 (b), the director must promptly notify the following, if practicable:

(a) each person who is entitled to be informed of the presentation hearing under section 34 (3), 36 (2.1) or 42.1 (3), as applicable;

(b) if applicable, any relevant Indigenous authority other than the Indigenous authority that requested the withdrawal.

(2) The notification under subsection (1) must

(a) indicate that the Indigenous authority is or will be providing Indigenous child and family services in accordance with an Indigenous law, and

(b) include information about an application that may be made under section 33.04, including the time period for making the application.

Section 33.04 - Application as to whether Indigenous law applies

33.04 (1) In this section, “applicant” means a director or another person making an application under subsection (2).

(2) The following persons may apply to the court for an order that the Indigenous law referred to in the notification under section 33.03 (2) (a) does not apply to the child:

(a) a director;

(b) each parent;

(c) the following designated representative, as applicable:

(i) if the child is a First Nation child, a designated representative of the First Nation;

(ii) if the child is a Nis×a’a child, a designated representative of the Nis×a’a Lisims Government;

(iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nis×a’a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(d) any relevant Indigenous authority other than the Indigenous authority that requested the withdrawal.

(3) The application must be made

(a) within 7 days after the date of the notification described in section 33.03 (1), or

(b) within the time period specified by the court, if an extension is granted under subsection (4) of this section.

(4) An applicant may apply to the court for an extension of the period described in subsection (3) (a), but the extension must be sought before the expiry of that period.

(5) The applicant must, at least 12 days before the date of the hearing, serve notice of the application on the director.

(6) The director must, promptly after being served notice under subsection (5) and at least 10 days before the date of the hearing, serve notice of the time, date and place of the hearing of the application on the following:

(a) the child, if 12 years of age or older;

(b) each parent;

(c) the Indigenous authority;

(d) the following designated representative, as applicable:

(i) if the child is a First Nation child, a designated representative of the First Nation;

(ii) if the child is a Nis×a'a child, a designated representative of the Nis×a'a Lisims Government;

(iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nis×a'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(e) if applicable, any relevant Indigenous authority other than the Indigenous authority that requested the withdrawal;

(f) the Public Guardian and Trustee, if the parent entitled to custody of the child is under 19 years of age.

(7) If a person referred to in subsection (6) (b) to (e) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(8) The court must, after considering the application of the Indigenous law to the child, order that

(a) the proceedings continue and any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect continues to apply, or

(b) the Indigenous law applies and the director is to withdraw in accordance with section 33.05.

(9) A hearing of the application must be concluded as soon as possible.

Section 33.05 - Transition to Indigenous authority

33.05 (1) The director must, in writing, notify the Indigenous authority referred to in section 33.02 (b) of the following:

(a) if no application is made under section 33.04 (2) before the end of the period described in section 33.04 (3), the information that no application has been made;

(b) any other information the director considers relevant, including if an application has been made and the applicant does not intend to proceed with the application.

(2) After the court orders under section 33.04 (8) (b) that the Indigenous law applies and the director is to withdraw or the director provides the notification under subsection (1) of this section,

(a) the Indigenous authority must, in writing, provide confirmation to the director of the date and time that the Indigenous authority will provide, or continue to provide, Indigenous child and family services in relation to the child, and

(b) the director is to withdraw on the date and at the time that the Indigenous authority specified in the confirmation.

(3) A director who withdraws under subsection (2) must present to the court a written report on the director's reasons for removing the child and on the director's withdrawal that includes the following:

(a) a copy of the confirmation and the request described in section 33.02

(b)

(b) proof that the director notified each person listed under section 33.03

(1) and, if applicable, the reason a person was not notified;

(c) a copy of the notification described in subsection (1) of this section;

- (d) a copy of the confirmation described in subsection (2) of this section.
- (4) The director must provide to each person notified under section 33.03 (1) a copy of the report presented to the court.

Section 33.06 - Cancellation of orders due to withdrawal

- 33.06 (1) When a director withdraws from a hearing or proceeding under this Division, any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect when the director withdraws is cancelled.
- (2) If an order under section 97 (5) is cancelled under subsection (1) of this section, any arrears owing in respect of that order are not cancelled.

Section 48.1 - Withdrawal of director due to Indigenous law – after presentation hearing

48.1 At any time after a presentation hearing, the director must withdraw from a proceeding in accordance with sections 48.2 to 48.5 if

- (a) the child is an Indigenous child,
- (b) an Indigenous authority provides to the director
 - (i) a written confirmation that the Indigenous authority is or will be providing Indigenous child and family services in accordance with an Indigenous law, and
 - (ii) a written request that the director withdraw, and
- (c) in the event that an application is made under section 48.3, the court orders that the Indigenous law applies.

Section 48.2 - Withdrawal notice – after presentation hearing

48.2 (1) If the director receives a confirmation and request from an Indigenous authority under section 48.1 (b), the director must promptly serve notice on the following:

- (a) the child, if 12 years of age or older;
- (b) each parent;
- (c) the following designated representative, as applicable:
 - (i) if the child is a First Nation child, a designated representative of the First Nation;
 - (ii) if the child is a Nis×a'a child, a designated representative of the Nis×a'a Lisims Government;
 - (iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;
 - (iv) if the child is not a First Nation child, a Nis×a'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by
 - (A) the child, if 12 years of age or over, or
 - (B) the parent, if the child is under 12 years of age;
- (d) if applicable, any relevant Indigenous authority other than the Indigenous authority that requested the withdrawal;
- (e) the Public Guardian and Trustee, if the Public Guardian and Trustee is the child's property guardian under section 58;

(f) a person, other than a director, who has custody of a child under an interim order or temporary custody order under this Act.

(2) The notice under subsection (1) must

(a) indicate that the Indigenous authority is or will be providing Indigenous child and family services in accordance with an Indigenous law, and

(b) include information about an application that may be made under section 48.3, including the time period for making the application.

(3) If the Public Guardian and Trustee is the child's property guardian under section 58, after receipt of notice under subsection (1) (e) of this section, the Public Guardian and Trustee must advise the Indigenous authority that the Public Guardian and Trustee is the child's property guardian.

Section 48.3 - Application as to whether Indigenous law applies – withdrawal after presentation hearing

48.3 (1) In this section, "applicant" means a director or another person making an application under subsection (2).

(2) A director or a person who is served notice under section 48.2 (1) (b), (c) or (d) may apply to the court for an order that the Indigenous law referred to in the notice under section 48.2 (2) (a) does not apply to the child.

(3) The application must be made

(a) within 7 days after the date of the service of the notice under section 48.2 (1), or

(b) within the time period specified by the court, if an extension is granted under subsection (4) of this section.

(4) An applicant may apply to the court for an extension of the period described in subsection (3) (a), but the extension must be sought before the expiry of that period.

(5) The applicant must, at least 12 days before the date of the hearing, serve notice of the application on the director.

(6) The director must, promptly after being served a notice under subsection (5) and at least 10 days before the date of the hearing, serve notice of the time, date and place of the hearing of the application on the following:

(a) the child, if 12 years of age or older;

(b) each parent;

(c) the Indigenous authority;

(d) the following designated representative, as applicable:

(i) if the child is a First Nation child, on a designated representative of the First Nation;

(ii) if the child is a Nisx'a child, on a designated representative of the Nisx'a Lisims Government;

(iii) if the child is a Treaty First Nation child, on a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nisx'a child nor a Treaty First Nation child but is an Indigenous child, on a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(e) if applicable, any relevant Indigenous authority other than the Indigenous authority that requested the withdrawal;

(f) the Public Guardian and Trustee, if the Public Guardian and Trustee is the property guardian of the child under section 58;

(g) a person, other than a director, who has custody of a child under an interim order or temporary custody order under this Act.

(7) If a person referred to in subsection (6) (b) to (e) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(8) The court must, after considering the application of the Indigenous law to the child, order that

(a) the proceedings continue and any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect continues to apply, or

(b) the Indigenous law applies and the director is to withdraw in accordance with section 48.4.

(9) A hearing of the application must be concluded as soon as possible.

Section 48.4 - Transition to Indigenous authority – withdrawal after presentation hearing

48.4 (1) The director must, in writing, notify the Indigenous authority referred to in section 48.1 (b) of the following:

(a) if no application is made under section 48.3 (2) before the end of the period described in section 48.3 (3), the information that no application has been made;

(b) any other information the director considers relevant, including if an application has been made and the applicant does not intend to proceed with the application.

(2) After the court orders under section 48.3 (8) (b) or 48.5 (5) (b) that the Indigenous law applies and the director is to withdraw or the director provides the notification under subsection (1) of this section,

(a) the Indigenous authority must, in writing, provide written confirmation to the director of the date and time that the Indigenous authority will provide, or continue to provide, Indigenous child and family services in relation to the child, and

(b) the director is to withdraw on the date and at the time that the Indigenous authority specified in the confirmation.

(3) A director who withdraws under subsection (2) must present to the court a written report on the director's withdrawal that includes the following:

(a) a copy of the confirmation and the request described in section 48.1;

(b) proof that the director served notice to each person entitled to service of the notice under section 48.2 (1) and, if applicable, that the court ordered that no service was required in respect of the person;

(c) a copy of the notification described in subsection (1) of this section;

(d) a copy of the confirmation described in subsection (2) of this section.

Section 48.5 - Change of circumstances – withdrawal after presentation

hearing

48.5 (1) An Indigenous authority may apply to the court for an order in relation to the application of an Indigenous law to an Indigenous child if there is a significant change in circumstances after an order is made under section 48.3 (8) in relation to the child.

(2) The applicant must, at least 12 days before the date of the hearing, serve notice of the application on the director.

(3) The director must, promptly after being served a notice under subsection (2) and at least 10 days before the date of the hearing, serve notice of the time, date and place of the hearing of the application on the following:

(a) the child, if 12 years of age or older;

(b) each party to the proceeding in relation to which the order referred to in subsection (1) was made;

(c) the Public Guardian and Trustee, if the Public Guardian and Trustee is the property guardian of the child under section 58.

(4) If a person referred to in subsection (3) (b) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(5) The court must, after considering the application of the Indigenous law to the child, order that

(a) the proceedings continue and any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect continues to apply, or

(b) an Indigenous law applies and the director is to withdraw in accordance with section 48.4 (2) and (3).

(6) A hearing of the application must be concluded as soon as possible.

Section 48.6 - Cancellation of orders due to withdrawal – after presentation hearing

48.6 (1) When a director withdraws from a hearing or proceeding under this Division, any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect when the director withdraws is cancelled.

(2) If an order under section 97 (5) is cancelled under subsection (1) of this section, any arrears owing in respect of that order are not cancelled.

Section 50.01 - Planning for Indigenous child after continuing custody order

50.01 A director, in respect of planning for the needs of an Indigenous child in the continuing custody of the director, must,

(a) if the director makes an agreement under section 92.1 (2) (a) (v), conduct the planning in accordance with the agreement, or

(b) if there is no agreement as referred to in paragraph (a), make all reasonable efforts to consult and collaborate, at least on an annual basis, with the following:

(i) if the child is a First Nation child, the designated representative of the First Nation;

(ii) if the child is a Nisga'a child, the designated representative of the Nisga'a Lisims Government;

(iii) if the child is a Treaty First Nation child, the designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nisga'a child nor a Treaty First Nation child, the designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age.

Section 50.02 - Indigenous authority intention to have custody – continuing custody order

50.02 (1) If an Indigenous authority intends to have custody, under an Indigenous law, of an Indigenous child who is in the continuing custody of the director, the Indigenous authority must provide written confirmation of that intention to

(a) the director, and

(b) the Public Guardian and Trustee.

(2) After receiving the confirmation described in subsection (1), the director must promptly serve a notice of the Indigenous authority's intention on the following:

(a) the child, if 12 years of age or over;

(b) each parent;

(c) the parties to the proceeding in which the continuing custody order was made;

(d) the following designated representative, as applicable:

(i) if the child is a First Nation child, a designated representative of the First Nation;

(ii) if the child is a Nis×a'a child, a designated representative of the Nis×a'a Lisims Government;

(iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nis×a'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(e) if applicable, any relevant Indigenous authority other than the Indigenous authority that provided the confirmation under section 50.02

(1).

(3) The notice under subsection (2) must

(a) indicate that the Indigenous authority will have custody of the child in accordance with an Indigenous law, and

(b) include information about an application that may be made under section 50.03, including the time period for making the application.

Section 50.03 - Application as to whether continuing custody order maintained

50.03 (1) In this section, "applicant" means a director or another person making an application under subsection (2).

(2) A director or a person notified under section 50.02 (2) (b), (c), (d) or (e) may apply to the court for an order that the continuing custody order be maintained on the basis that the Indigenous law referred to in the notice under section 50.02 (3) (a) does not apply to the child.

(3) The application must be made

(a) within 10 days after the date of the service of the notice described in section 50.02 (2), or

(b) within the time period specified by the court, if an extension is granted under subsection (4) of this section.

(4) An applicant may apply to the court for an extension of the period described in subsection (3) (a), but the extension must be sought before the expiry of that period.

(5) The applicant must, at least 12 days before the date of the hearing, serve notice of the application on the director.

(6) The director must, promptly after being served notice under subsection (5) and at least 10 days before the date of the hearing, serve notice of the time, date and place of the hearing of the application on the following:

(a) the child, if 12 years of age or older;

(b) each parent;

(c) the Indigenous authority;

(d) the following designated representative, as applicable:

(i) if the child is a First Nation child, a designated representative of the First Nation;

(ii) if the child is a Nis×a'a child, a designated representative of the Nis×a'a Lisims Government;

(iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nisx'a'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(e) if applicable, any relevant Indigenous authority other than the Indigenous authority that provided the confirmation under section 50.02

(1);

(f) the Public Guardian and Trustee.

(7) If a person referred to in subsection (6) (b) to (e) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(8) The court must, after considering the application of the Indigenous law to the child, order

(a) that the child remains in the custody of the director under the continuing custody order and that the continuing custody order be maintained, or

(b) that the Indigenous law applies and the continuing custody order is to be cancelled in accordance with section 50.04.

(9) A hearing of the application must be concluded as soon as possible.

Section 50.04 - Transition to Indigenous authority having custody

50.04 (1) The director must, in writing, notify the Indigenous authority referred to in section 50.02 (1) of the following:

(a) if no application is made under section 50.03 (2) before the end of the period described in section 50.03 (3), the information that no application has been made;

(b) any other information the director considers relevant, including if an application has been made and the applicant does not intend to proceed with the application.

(2) After the court orders under section 50.03 (8) (b) or 50.05 (5) (b) that Indigenous law applies and the continuing custody order is to be cancelled or the director provides the notification under subsection (1) of this section,

(a) the Indigenous authority must, in writing, provide confirmation to the director of the date and time that the Indigenous authority will have custody in relation to the child, and

(b) the continuing custody order is to be cancelled on the date and at the time that the Indigenous authority specified in the confirmation.

(3) After the cancellation of the continuing custody order under subsection (2), the director must present to the court a written report that includes the following:

(a) a copy of the confirmation described in section 50.02 (1);

(b) proof that the director served notice to each person entitled to service of the notice under section 50.02 (2) and, if applicable, that the court ordered that no service was required in respect of the person;

(c) a copy of the notification described in subsection (1) of this section;

(d) a copy of the confirmation described in subsection (2) of this section.

Section 50.05 - Change of circumstances – continuing custody order

50.05 (1) An Indigenous authority may apply to the court for an order in relation to the application of an Indigenous law to an Indigenous child if there is a significant change in circumstances after an order is made under section 50.03 (8) in relation to the child.

(2) The applicant must, at least 12 days before the date of the hearing, serve notice of the application on the director.

(3) The director must, promptly after being served a notice under subsection (2) and at least 10 days before the date of the hearing, serve notice of the time, date and place of the hearing of the application on the following:

(a) the child, if 12 years of age or older;

(b) each party to the proceeding in relation to which the order referred to in subsection (1) was made.

(4) If a person referred to in subsection (3) (b) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

(5) The court must, after considering the application of the Indigenous law to the child, order that

(a) the proceedings continue and any interim order, supervision order, temporary custody order or order under section 97 (5) that is in effect continues to apply, or

(b) the Indigenous law applies and the director is to withdraw in accordance with section 50.04 (2) and (3).

(6) A hearing of the application must be concluded as soon as possible.

Section 50.06 - Before placement of Indigenous child for adoption

50.06 Before requesting placement of an Indigenous child for adoption, a director must make all reasonable efforts to consult and cooperate with the following, as applicable:

(a) if the child is a First Nation child, a designated representative of the First Nation;

(b) if the child is a Nis×a'a child, a designated representative of the Nis×a'a Lisims Government;

(c) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(d) if the child is not a First Nation child, a Nis×a'a child nor a Treaty First Nation child, a designated representative of an Indigenous community that has been identified by

(i) the child, if 12 years of age or over, or

(ii) the parent, if the child is under 12 years of age;

(e) any other applicable Indigenous governing body.

Section 50.1 - Placement of child for adoption

50.1 (1) Subject to section 50.06, a director may request a director of adoption to place a child for adoption if

(a) the child is in the continuing custody of the director, or

(b) the director is the child's personal guardian under section 51 of the

Infants Act.

- (2) A request under subsection (1) (a) must not be made unless
- (a) the continuing custody order was made by consent,
 - (b) the time limit under section 81 (2) in relation to the continuing custody order has expired and no extension under section 81 (8) has been granted,
 - (c) all appeals related to the continuing custody order have been heard and the continuing custody order has been upheld, or
 - (d) in the case of an Indigenous child, the consent of the applicable Indigenous governing body is obtained, including in accordance with an applicable agreement, if any, entered into with an Indigenous governing body under section 90.

Section 50.2 - Dispensing with consent – Indigenous governing body

50.2 (1) On application from a director or a child who is 12 years of age or older, the court may, in the child's best interests, dispense with the consent required under section 50.1 (2) (d).

(2) At least 10 days before the date set for hearing the application, notice of the hearing must be served on

- (a) the child, if 12 years of age or older;
- (b) the director;
- (c) the following designated representatives, as applicable:
 - (i) if the child is a First Nation child, a designated representative of the First Nation;
 - (ii) if the child is a Nisx'a'a child, a designated representative of the Nisx'a'a Lisims Government;

(iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

(iv) if the child is not a First Nation child, a Nisx'a child nor a Treaty First Nation child but is an Indigenous child, a designated representative of another Indigenous community that has been identified by

(A) the child, if 12 years of age or over, or

(B) the parent, if the child is under 12 years of age;

(d) the person identified by an applicable Indigenous governing body to accept service of the notice, if not already entitled to notice under paragraph (c).

(3) If a person referred to in subsection (2) appears at the commencement of the hearing, that person is entitled to be a party at the hearing.

Section 51.1 - Role of Public Guardian and Trustee – Indigenous authority

51.1 (1) If an Indigenous authority seeks to enter into an agreement with the Public Guardian and Trustee for the Public Guardian and Trustee to continue to be an Indigenous child's property guardian, the Indigenous authority must, subject to the regulations, give the Public Guardian and Trustee a notice of intent to enter into the agreement.

(2) If an Indigenous authority enters into an agreement with the Public Guardian and Trustee for the Public Guardian and Trustee to continue to be an Indigenous child's property guardian, the Public Guardian and Trustee may, subject to the regulations, continue to be the child's property guardian in a circumstance where

(a) the Public Guardian and Trustee is the child's property guardian under section 50 (1) (b) or 58, and

(b) an Indigenous authority is to have custody of the child after

(i) a director withdraws under section 48.4 (2), or

(ii) a continuing custody order is cancelled under section 50.04 (2).

(3) For the purposes of section 7 (1) of the Public Guardian and Trustee Act, the continuation of property guardianship by the Public Guardian and Trustee in accordance with an agreement described in subsection (2) of this section is deemed to be an appointment as property guardian under this Act.

(4) An agreement entered into under subsection (2) may, subject to the regulations, be terminated by the Indigenous authority or the Public Guardian and Trustee by giving the other party to the agreement notice.

Section 79.2 - Disclosing information to Indigenous authority

79.2(1) In this section, "public body" has the same meaning as in the *Freedom of Information and Protection of Privacy Act*.

(2) A public body or director must, on request by an Indigenous authority, disclose to the Indigenous authority information that is

(a) in the custody or control of the public body or the director, and

(b) necessary for the provision of Indigenous child and family services under an Indigenous law to an Indigenous child or family.

(3) This section applies despite any other enactment but is subject to a claim of privilege based on a solicitor-client relationship.

Division 1 – Agreements Respecting the *Declaration on the Rights of Indigenous Peoples Act*

Section 89.1 - Definitions and interpretation for this Division

89.1 In this Division and section 101:

“**decision-making agreement**” means an agreement negotiated and entered into under section 7 of the *Declaration on the Rights of Indigenous Peoples Act* relating to statutory powers of decision under this Act;

“**statutory power**” has the same meaning as in section 1 of the *Judicial Review Procedure Act*, but does not include a power or right conferred by this Act to exercise a statutory power of decision;

“**statutory power agreement**” means an agreement entered into under section 6 of the *Declaration on the Rights of Indigenous Peoples Act* relating to one or both of the following:

- (a) the exercise of a statutory power under this Act jointly by
 - (i) the Indigenous governing body, and
 - (ii) a director or another decision-maker;
- (b) the consent of an Indigenous governing body before the exercise of a statutory power under this Act;

“**statutory power of decision**” has the same meaning as in section 1 of the *Judicial Review Procedure Act*.

Section 89.2 - Agreements in relation to the Declaration on the Rights of Indigenous Peoples Act

89.2 (1) For the purposes of this Act, a statutory power agreement may only be entered into in accordance with subsections (2) and (3).

(2) For the purposes of this Act, the Lieutenant Governor in Council may authorize the minister, on behalf of the government, to negotiate and enter into a statutory power agreement with an Indigenous governing body.

(3) Section 7 (2) to (5) of the *Declaration on the Rights of Indigenous Peoples Act* applies to a statutory power agreement.

(4) A single agreement may contain both a decision-making agreement and a statutory power agreement.

Section 89.3 - Required conditions

89.3 A decision-making agreement or a statutory power agreement must include conditions on the use, disclosure and security of information that is provided under the agreement to an Indigenous governing body.

Section 89.4 - Effect of agreements

89.4 If a decision-making agreement or a statutory power agreement has been entered into,

(a) the statutory power of decision or the statutory power, as applicable, must be exercised in accordance with the agreement,

(b) a reference under this Act to that statutory power of decision or that statutory power is to be read as a reference to the statutory power of decision or the statutory power as made in accordance with the agreement, and

(c) the following terms of an agreement have the force of law:

(i) terms identifying the person who is carrying out the exercise of, or providing consent in relation to, a statutory power of decision or a statutory power in accordance with an agreement;

(ii) terms relating to the criteria or procedures for the exercise of, or consent in relation to, a statutory power of decision or a statutory power in accordance with an agreement.

Division 3 – Agreements Relating to the Nis×a’a Nation and Treaty First Nations

Division 4 – Matters Relating to Directors

Section 90.2 - Definitions for this Division

90.2 In this Division:

“amending agreement” means an agreement made in accordance with section 90.5 (2) (a) that sets out amendments to the Nis×a’a Final Agreement or the final agreement of the Treaty First Nation, as applicable, to include the law-making authority for making an Indigenous law with application in British Columbia,

(a) in the case of the Nis×a’a Nation, outside the Nis×a’a Lands, or

(b) in the case of the Treaty First Nation, outside the treaty lands of the Treaty First Nation;

“enabling agreement” means an agreement made in accordance with section 90.5 (2) (b) in relation to the recognition of the law-making authority of the Nis×a’a Nation or a Treaty First Nation to make an Indigenous law with application in British Columbia,

(a) in the case of the Nis×a’a Nation, outside the Nis×a’a Lands, or

(b) in the case of the Treaty First Nation, outside the treaty lands of the Treaty First Nation.

Section 90.3 - Purpose for this Division

90.3 The purpose of this Division is to set out processes to enable the Nis×a’a Nation and Treaty First Nations to exercise law-making authority in British Columbia in relation to the following, in addition to the authority in the Nis×a’a Final Agreement or the final agreements of Treaty First Nations:

(a) in the case of the Indigenous law of the Nis×a’a Nation, in relation to Indigenous child and family services provided outside the Nis×a’a Lands;

(b) in the case of the Indigenous law of the Treaty First Nations, in relation to Indigenous child and family services provided outside the treaty lands of the Treaty First Nations.

Section 90.4 - Negotiation

90.4 After a request from the Nis×a'a Nation or a Treaty First Nation to enter into an agreement under this Division, the government must make all reasonable efforts to negotiate and attempt to reach agreement with the Nis×a'a Nation or the Treaty First Nation.

Section 90.5 - Indigenous laws – force of law

90.5 (1) Subject to subsection (2), an Indigenous law of the Nis×a'a Nation or a Treaty First Nation, as applicable, has the force of law and applies,

(a) in the case of the Indigenous law of the Nis×a'a Nation, to Indigenous child and family services outside Nis×a'a Lands, and

(b) in the case of the Indigenous law of the Treaty First Nation, to Indigenous child and family services outside treaty lands of the Treaty First Nation.

(2) Subsection (1) applies to the Nis×a'a Nation or a Treaty First Nation, as applicable, if,

(a) in the case of an amending agreement,

(i) the Nis×a'a Nation or the Treaty First Nation enters into the amending agreement with

(A) the government, and

(B) the government of Canada, and

(ii) the following requirements are met in respect of the amendment of the Nis×a'a Final Agreement or the final agreement of the Treaty First Nation, as applicable:

(A) a resolution consenting to the amendment is passed by the Legislative Assembly;

(B) the amending agreement includes an effective date of the amendment that is on or before the date of the consent to the amendment by the government of Canada by order of the Governor General in Council;

(C) the terms and conditions of the amending agreement are complied with, or

(b) in the case of an enabling agreement,

(i) the Nis×a'a Nation or the Treaty First Nation enters into the enabling agreement

(A) with the government, and

(B) if the enabling agreement includes recognition of an inherent right, with the government of Canada,

(ii) the enabling agreement is published in the Gazette, and

(iii) the terms and conditions of the enabling agreement are

complied with.

Section 90.6 - Effective date

90.6 The law-making authority described in section 90.5 (1) may be exercised by the Nis×a'a Nation or a Treaty First Nation, as applicable,

(a) in the case of an amending agreement, from the date that is the latest of the following dates:

(i) the date that the Nis×a'a Nation or the Treaty First Nation consents to the amendment of the Nis×a'a Final Agreement or the final agreement of the Treaty First Nation;

(ii) the date of the resolution referred to in section 90.5 (2) (a) (ii) (A) being passed by the Legislative Assembly;

(iii) a date later than the dates referred to in subparagraphs (i) and (ii) set out in the amending agreement, and
(b) in the case of an enabling agreement, from the date of publication in the Gazette under section 90.5 (2) (b) (ii) or a later date set out in the enabling agreement.

Section 90.7 - No limit upon lawmaking

90.7 The application of this Division in respect of an amending agreement or an enabling agreement entered into by the Nis×a'a Nation or a Treaty First Nation does not limit or otherwise abrogate or derogate from the law-making authority under the Nis×a'a Final Agreement or the final agreement of the Treaty First Nation, as applicable.

Section 90.8 - Conflict or inconsistency

90.8 To the extent of any conflict or inconsistency between this Division and a provision that sets out the prevailing nature of the Nis×a'a Final Agreement or the final agreement of a Treaty First Nation, or of the relevant settlement legislation, this Division applies despite that provision if the Nis×a'a Nation or the Treaty First

Nation, as applicable, has entered into an agreement under this Division, until such time as the Nisx'a Final Agreement or the final agreement of the Treaty First Nation provides for the authority described in section 90.5 (1) (a) or (b).

Section 91.1 - Designation of Provincial Director of Child Welfare

91.1(1) Subject to the regulations, the minister may designate a person to be the Provincial Director of Child Welfare for the purposes of

(a) any or all of the provisions of this Act, or

(b) a provision of another Act that contains a reference to a director under this Act.

(2) The powers, duties and functions of the Provincial Director of Child Welfare include any prescribed powers, duties and functions.

(3) Section 91 (2) to (4) applies in respect of the Provincial Director of Child Welfare.

Section 91.2 - Designation of Indigenous Child Welfare Director

91.2 (1) Subject to the regulations, the minister may designate a person to be the Indigenous Child Welfare Director for the purposes of

(a) any or all of the provisions of this Act, or

(b) a provision of another Act that contains a reference to a director under this Act.

(2) Subject to the regulations, a designation under subsection (1) must be made in consultation and cooperation with Indigenous peoples in British Columbia whose rights or interests may be affected by the designation.

(3) The powers, duties and functions of the Indigenous Child Welfare Director include

(a) responsibility for providing advice and guidance to other directors in performing their powers and exercising their duties and functions to ensure services are provided to Indigenous children and families under this Act in

accordance with the principles and duties set out in section 3 and in Part 1.1, and

(b) any prescribed powers, duties and functions.

(4) Section 91 (2) to (4) applies in respect of the Indigenous Child Welfare Director.

Section 92.1 - Director may make agreements respecting Indigenous children

92.1 (2) A director may make an agreement with a First Nation, the Nisga'a Nation, a Treaty First Nation or a legal entity representing another Indigenous community for one or more of the following purposes:

(a) to consult and collaborate with the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community about in one or more of the following:

(i) the development of plans of independence for youth who are Indigenous children of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community;

(ii) assessments under section 16 (2) (b.1) respecting the Indigenous families of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community;

(iii) investigations under section 16 (2) (c) respecting the Indigenous children of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community;

(iv) the development of plans of care for the Indigenous children of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community;

(v) planning for the needs of the Indigenous children of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community who are in the custody, care or guardianship of a director;

(vi) placement decisions under section 71 respecting the Indigenous children of the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community;

(b) for the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community to provide services;

(c) for any other purpose as prescribed by regulation.

(3) Subject to any regulations made under section 103 (2) (q.2), an agreement made under this section with a First Nation, the Nisga'a Nation, a Treaty First Nation or another Indigenous community must include conditions on the use, disclosure and security of information provided under the agreement to the First Nation, Nisga'a Nation, Treaty First Nation or Indigenous community.

(4) Subject to any regulations made under section 103 (2) (q.2), if a director makes an agreement under this section, the agreement applies to all directors.

(5) Subsections (3) and (4) do not apply to an agreement, or a part of an agreement, made under subsection (2) (b).

Section 99 - Provincial Court jurisdiction – dispute resolution

99.1 For the purpose of conferring jurisdiction related to an Indigenous law, the court has jurisdiction in relation to a legal dispute arising under an Indigenous law if the Indigenous law provides for that jurisdiction.