

**A
(very BRIEF)
(RECENT)
HISTORY
OF
CHILD
AND
FAMILY
SERVICES
ACT
(CFCSA)
IN
BRITISH
COLUMBIA**



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The information that is shared in this webinar is taken from many sources including but not limited to BC Foster Parents Association (BCFPA), Interior Community Services, ARC Programs, BC Ministry of Child and Family Development, and other websites for resources and education. Remember to regularly update your files as changes occur.



CFCSA DEFINITIONS

CFCSA *Child, Family and Community Services Act*

INAC *Indian and Northern Affairs Canada's Now split:*
1. *Department of Indigenous Services, or ISC*
2. *Crown-Indigenous Relations and Northern Affairs Canada*

ISC *Indigenous Services Canada*

ICFSA *Indigenous Child and Family Service Agency (previously referred to as DAA – Delegated Aboriginal Agency)*

DRIPA *Declaration on the Rights of Indigenous Peoples Act (Provincial) and establishes the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration) as the Province's framework for reconciliation, as called for by the TRC*

Equality *each individual or group of people is given the same resources or opportunities*

Substantive Equality

when equality in outcomes does not exist, inequality remains

Equity *recognizes that each person has different circumstances and allocates the exact resources and opportunities needed to reach an equal outcome. (George Washington University)*

Video on equality vs equity vs justice <https://youtu.be/Uvoios7frls>

Resource Work Policies Definitions

INDIGENOUS AUTHORITY

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 GOVERNING BODY

An entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the Constitution Act, 1982. Once it is clear which Indigenous governing body has been authorized to act on behalf of an Indigenous group, community, or people, that information is added to a table of Indigenous governing bodies and the communities they represent.

INDIGENOUS CHILD & FAMILY SERVICES

Services provided by an Indigenous authority to support Indigenous children and families, including prevention services, early intervention services and child protection services.

INDIGENOUS LAW

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.



FEDERAL BILL

BILL C-92 (2020)

The federal Act respecting First Nations, Inuit and Métis children, youth and families came into force in January 2020. **The Act affirms the inherent rights and jurisdiction of First Nations, Métis and Inuit peoples in relation to child and family services.** The federal Act requires Indigenous governing bodies to enter into Coordination Agreements with the federal and provincial governments to support the exercise of their legislative authority.

These agreements must include the provision of emergency services, support measures for First Nations, Métis and Inuit children to exercise their rights, fiscal arrangements and any other coordination measures related to the exercise of jurisdiction.

PROVINCIAL BILLS

BILL 26 (2018)

Bill 26 aimed "to increase the involvement of Indigenous communities in child protection matters at every stage - prior to removal, after legal proceedings have commenced and following the making of a continuing custody order. This would be accomplished, in part, by improvements to notice requirements as well as greater information sharing and collaboration between the Ministry of Children and Family Development and Indigenous communities. Importantly, the proposed changes affirm that Indigenous children are entitled to 'learn about and practice their Indigenous traditions, customs and languages, and belong to their Indigenous communities.'" (CBABC)

BILL 38 (2022)

Indigenous Self-Government in Child and Family Services Amendment Act received Royal Assent on Nov 24, 2022. "Bill 38 is specifically about Indigenous peoples' inherent right to jurisdiction over children and families, but it is also more broadly about the revitalization of Indigenous legal orders. The amendments, the largest in 26 years, respect and uphold the inherent rights of Indigenous communities to provide their own child and family services, and to keep Indigenous children safely connected to their families, cultures and communities. The legislation will support Indigenous Peoples to re-establish, develop and exercise child-welfare laws for their community members and to recreate their own models for child and family service delivery, including those focused on family support, child protection and adoption services. The amendments were developed in consultation and co-operation with Indigenous rightsholders, Modern Treaty Nations, Indigenous Governing Bodies (IGBs), Métis Nation BC and Indigenous partners." (BC Government)

INDIGENOUS CHILD AND FAMILY SERVICE AGENCIES - ICFSAs

As of December 2024, there are **25 ICFSAs** with various levels of delegation. Through delegation agreements, the Provincial Director of Child Welfare (the Director) gives authority to ICFSAs and their employees, to undertake administration of all or parts of the CFCSA (Child, Family and Community Service Act). The amount of responsibility undertaken by each agency is the result of negotiations between the ministry and the Indigenous community served by the agency, and the level of delegation provided by the Director.

To date, 117 of the 202 First Nations in B.C. are represented by ICFSAs that either have, or are actively planning toward, delegation agreements to manage their own child and family services. The ministry is working with Indigenous communities to support them to carry out these responsibilities.

ICFSA Agencies funded by MCFD for off-reserve child welfare services must compete for contracts to receive prevention funding.



Business Side of Fostering

A Brief History of Child & Family Service Act (CFCSA)



Business Side of Fostering

A Brief History of Child & Family Service Act (CFCSA)



CFCSA References & Resources

- ▶ **At a Crossroads** (RCY Report) <https://rcybc.ca/reports-and-publications/crossroads/>
- ▶ **Canada: What Always Was, Now Is: Bill 38 and the Provincial Affirmations of Indigenous Jurisdiction Over Child and Family Services** Mondaq.com
- ▶ **Declaration on the Rights of Indigenous Peoples Act**
<https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>
- ▶ **Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples**
- ▶ First Nations Child and Family Caring Society, **"I am a Witness: Tribunal Timeline and Documents,"** <https://fncaringsociety.com/i-am-witness/tribunal-timeline>
- ▶ **ICFSAs in BC** <https://www2.gov.bc.ca/gov/content/family-social-supports/data-monitoring-quality-assurance/reporting-monitoring/accountability/indigenous-child-and-family-service-agencies>
- ▶ **National Centre for Truth and Reconciliation** <https://nctr.ca/>
Paradigm Shift in the CFCSA Indigenous Children Cannot Afford to Wait (Frances Rosner, Bartalk, April 2023) www.cbabc.org
- ▶ **Standards for Foster Homes** (2024)



DRAFT PRINCIPLES
that Guide the
PROVINCE OF BRITISH COLUMBIA'S
Relationship with
INDIGENOUS PEOPLES



DRAFT PRINCIPLES that Guide the PROVINCE OF BRITISH COLUMBIA'S Relationship with INDIGENOUS PEOPLES

The Province wants to renew its relationship with Indigenous peoples in B.C., and affirms its desire to achieve a government-to-government relationship based on respect, recognition and exercise of Aboriginal title and rights and to the reconciliation of Aboriginal and Crown titles and jurisdictions. We agree to work with Indigenous peoples to jointly design, construct and implement principled, pragmatic and organized approaches informed by the Supreme Court of Canada *Tsilhqot'in* decision and other established law, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Truth and Reconciliation Commission (TRC) Calls to Action.

Indigenous people have a special constitutional relationship with the Crown. This relationship, including existing Aboriginal and treaty rights, is recognized and affirmed in section 35 of the *Constitution Act*, 1982.

The Province's draft reconciliation principles are intended as bold statements to guide this new relationship and end the denial of Indigenous rights that have led to disempowerment and assimilationist policies and practices. The principles will assure the Province conducts itself in a way that reflects a clear shift in an often troubled relationship with Indigenous peoples to a modern government-to-government relationship that is strong, sophisticated and valued. These principles create the space needed to exercise our respective jurisdictions for the benefit of all British Columbians. We will recognize success when we know Indigenous peoples believe themselves to be self-determining, self-governing, self-sufficient and can practise their Indigenous cultural traditions and customs as an important and respected part of B.C. society.

B.C.'s principles are about renewing the Crown-Indigenous relationship. They are an important starting point to move away from the status quo and to empower the Province to fundamentally change its relationship with Indigenous peoples, a process that will take time and will call for innovative thinking and action. This is necessary to ensure a modernized Crown-Indigenous relationship in B.C.

1 The Province of British Columbia recognizes that all relations with Indigenous peoples need to be based on the recognition and implementation of their right to self-determination, including the inherent right of self-government.

This opening principle affirms the priority of recognition in renewed government-to-government relationships. As set out by the courts, an Indigenous nation or rights-holding group is a group of Indigenous people sharing critical features such as language, customs, traditions, and historical experience at key moments in time like first contact, assertion of Crown sovereignty, or effective control. The Royal Commission on Aboriginal Peoples estimated that there are between 60 and 80 historical nations in Canada.

The Province's recognition of the ongoing presence and inherent rights of Indigenous peoples as a defining feature of Canada is grounded in the promise of section 35 of the *Constitution Act*, 1982, in addition to reflecting articles 3 and 4 of UNDRIP. The promise mandates the reconciliation of the prior existence of Indigenous peoples and the assertion of Crown sovereignty, as well as the fulfilment of historic treaty relationships.

This principle reflects UNDRIP's call to respect and promote the inherent rights of Indigenous peoples. This includes the rights that derive from their political, economic, and social structures and from their cultures, spiritual traditions, histories, laws, and philosophies, especially their rights to their lands, territories and resources.

The constitutional and legal order in Canada recognizes the reality that Indigenous peoples' ancestors owned and governed the lands which now constitute Canada prior to the Crown's assertion of sovereignty. All of the Crown's relationships with Indigenous peoples are based on recognition of this fact and supported by the recognition of Indigenous title and rights, as well as the negotiation and implementation of pre-Confederation, historic, and modern treaties.

It is the mutual responsibility of all governments to shift their relationships and arrangements with Indigenous peoples so that they are based on recognition and respect for the right to self-determination, including the inherent right of self-government for Indigenous nations. This responsibility includes changes in the operating practices and processes of the provincial government. For Indigenous peoples, this responsibility includes how they define and govern themselves as nations and governments and the parameters of their relationships with other orders of government.

2 The Province of British Columbia recognizes that reconciliation is a fundamental purpose of section 35 of the *Constitution Act*, 1982.

Reconciliation is an ongoing process through which Indigenous peoples and the Crown work cooperatively to establish and maintain a mutually respectful framework for living together, with a view to fostering strong, healthy, and sustainable Indigenous nations within a strong Canada. As we build a new future, reconciliation requires recognition of rights and that we all acknowledge the wrongs of the past, know our true history, and work together to implement Indigenous rights.

This transformative process involves reconciling the pre-existence of Indigenous peoples and their rights and the assertion of sovereignty of the Crown, including inherent rights, title, and jurisdiction. Reconciliation, based on recognition, will require hard work, changes in perspectives and actions, and compromise and good faith, by all.

Reconciliation frames the Crown's actions in relation to Aboriginal and treaty rights and informs the Crown's broader relationship with Indigenous peoples. The Province's approach to reconciliation is guided by UNDRIP, the TRC Calls to Action, constitutional values, and collaboration with Indigenous peoples as well as the federal and other provincial and territorial governments.

3 The Province of British Columbia recognizes that the honour of the Crown guides the conduct of the Crown in all of its dealings with Indigenous peoples.

The Province recognizes that it must uphold the honour of the Crown, which requires the provincial government and its departments, agencies, and officials to act with honour, integrity, good faith, and fairness in all of its dealings with Indigenous peoples. The honour of the Crown gives rise to different legal duties in different circumstances, including fiduciary obligations and diligence. The overarching aim is to ensure that Indigenous peoples are treated with respect and as full partners in Confederation.

4 The Province of British Columbia recognizes that Indigenous self-government is part of Canada's evolving system of cooperative federalism and distinct orders of government.

This principle affirms the inherent right of self-government as an existing Aboriginal right within section 35 of the *Constitution Act, 1982*. Recognition of the inherent jurisdiction and legal orders of Indigenous nations is therefore the starting point of discussions aimed at interactions between federal, provincial, territorial, and Indigenous jurisdictions and laws.

As informed by UNDRIP, Indigenous peoples have a unique connection to and constitutionally protected interest in their lands, including decision making, governance, jurisdiction, legal traditions, and fiscal relations associated with those lands.

Government-to-government relationships, including treaty relationships, therefore include:

1. developing mechanisms and designing processes which recognize that Indigenous peoples are foundational to Canada's constitutional framework;
2. involving Indigenous peoples in the effective decision making and governance of our shared home;
3. putting in place effective mechanisms to support the transition away from colonial systems of administration and governance; and
4. ensuring, based on recognition of rights, the space for the operation of Indigenous jurisdictions and laws.

5 The Province of British Columbia recognizes that treaties, agreements, and other constructive arrangements between Indigenous peoples and the Crown have been and are intended to be acts of reconciliation based on mutual recognition and respect.

This principle recognizes that Indigenous peoples have diverse interests and aspirations and that reconciliation can be achieved in different ways with different nations, groups, and communities.

This principle honours historic treaties as frameworks for living together, including the modern expression of these relationships. In accordance with the Royal Proclamation of 1763, many Indigenous nations and the Crown historically relied on treaties for mutual recognition and respect to frame their relationships. Across much of Canada, the treaty relationship between the Indigenous nations and Crown is a foundation for ongoing cooperation and partnership with Indigenous peoples.

The Province recognizes the role that treaty making has played in building Canada and the contemporary importance of treaties, both historic and those negotiated after 1973, as foundations for ongoing efforts at reconciliation. The spirit and intent of both Indigenous and Crown parties to treaties, as reflected in oral and written histories, must inform constructive partnerships, based on the recognition of rights, that support full and timely treaty implementation.

In accordance with section 35 of the *Constitution Act*, 1982, all Indigenous peoples in Canada should have the choice and opportunity to enter into treaties, agreements, and other constructive arrangements with the Crown as acts of reconciliation that form the foundation for ongoing relations. The Province prefers no one mechanism of reconciliation to another. It is prepared to enter into innovative and flexible arrangements with Indigenous peoples that will ensure that the relationship accords with the aspirations, needs, and circumstances of the Crown-Indigenous relationship.

The Province also acknowledges that the existence of Indigenous rights is not dependent on an agreement and, where agreements are formed, they should be based on the recognition and implementation of rights and not their extinguishment, modification, or surrender.

Accordingly, this principle recognizes and affirms the importance that Indigenous peoples determine and develop their own priorities and strategies for organization and advancement. The Province recognizes Indigenous peoples' right to self-determination, including the right to freely pursue their economic, political, social, and cultural development.

6 The Province of British Columbia recognizes that meaningful engagement with Indigenous peoples aims to secure their free, prior and informed consent when B.C. proposes to take actions which impact them and their rights, including their lands, territories and resources.

This principle acknowledges the Province's commitment to a new government-to-government relationship that builds on and goes beyond the legal duty to consult. In delivering on this commitment, the Province recognizes the right of Indigenous peoples to participate in decision making in matters that affect their rights through their own representative institutions and the need to consult and cooperate in good faith with the aim of securing their free, prior and informed consent.

The Supreme Court of Canada has clarified that the standard to secure consent of Indigenous peoples is strongest in the case of Aboriginal title lands. The Supreme Court of Canada has confirmed that Aboriginal title gives the holder the right to use, control, and manage the land and the right to the economic benefits of the land and its resources. The Indigenous nation, as proper title holder, decides how to use and manage its lands for both traditional activities and modern purposes, subject to the limit that the land cannot be developed in a way that would deprive future generations of the benefit of the land.

The importance of free, prior and informed consent, as identified in UNDRIP, extends beyond title lands. To this end, British Columbia will look for opportunities to build processes and approaches aimed at securing consent, as well as creative and innovative mechanisms that will help build deeper collaboration, consensus, and new ways of working together. It will ensure that Indigenous peoples and their governments have a role in public decision making as part of Canada's constitutional framework and ensure that Indigenous rights, interests, and aspirations are recognized in decision making.

7 The Province of British Columbia recognizes that respecting and implementing rights is essential and that any infringement of section 35 rights must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown's fiduciary obligations.

This principle reaffirms the central importance of working in partnership to recognize and implement rights and, as such, that any infringement of Aboriginal or treaty rights requires justification in accordance with the highest standards established by Canada's courts and must be attained in a manner consistent with the honour of the Crown and the objective of reconciliation.

This requirement flows from the constitutional arrangements in Canada. Meaningful engagement with Indigenous peoples is therefore mandated whenever the Province may seek to infringe a section 35 right.

8 The Province of British Columbia recognizes that reconciliation and self-government require a renewed fiscal relationship, developed in collaboration with the federal government and Indigenous nations that promotes a mutually supportive climate for economic partnership and resource development.

The Province recognizes that the rights, interests, perspectives, and governance role of Indigenous peoples are central to securing a new fiscal relationship. It also recognizes the importance of strong Indigenous governments in achieving political, social, economic, and cultural development and improved quality of life. This principle recognizes that a renewed economic and fiscal relationship must ensure that Indigenous nations have the fiscal capacity, as well as access to land and resources, in order to govern effectively and to provide programs and services to those for whom they are responsible.

The renewed fiscal relationship will also enable Indigenous peoples to have fair and ongoing access to their lands, territories, and resources to support their traditional economies and to share in the wealth generated from those lands and resources as part of the broader provincial economy.

A fairer fiscal relationship with Indigenous nations can be achieved by the Province, in concert with the federal government, through a number of mechanisms such as new tax arrangements and the negotiation of revenue-sharing agreements.

9 The Province of British Columbia recognizes that reconciliation is an ongoing process that occurs in the context of evolving Crown-Indigenous relationships.

This principle recognizes that reconciliation processes, including processes for negotiation and implementation of treaties, agreements and other constructive arrangements, will need to be innovative and flexible and build over time in the context of evolving Crown-Indigenous relationships. These relationships are to be guided by the recognition and implementation of rights.

Treaties, agreements, and other constructive arrangements should be capable of evolution over time. Moreover, they should provide predictability for the future as to how provisions may be changed or implemented and in what circumstances. The Province is open to flexibility, innovation, and diversity in the nature, form, and content of agreements and arrangements.

The Province also recognizes that it has an active role and responsibility in ensuring the cultural survival of Indigenous peoples as well as in protecting Aboriginal and treaty rights.

The Province will collaborate with Indigenous peoples on changes to provincial laws, policies and practices.

10 The Province of British Columbia recognizes that a distinctions-based approach is needed to ensure that the unique rights, interests and circumstances of Indigenous peoples in B.C. are acknowledged, affirmed, and implemented.

The Province recognizes First Nations, the Métis Nation, and Inuit as the Indigenous peoples of Canada, consisting of distinct, rights-bearing communities with their own histories, including with the Crown. The work of forming renewed relationships based on the recognition of rights, respect, co-operation, and partnership must reflect the unique interests, priorities and circumstances of each people.



NEWS RELEASE

For Immediate Release
2022PREM0061-001594
Oct. 26, 2022

Office of the Premier
Ministry of Children and Family Development

Historic changes to B.C. child-welfare laws lay path to upholding Indigenous jurisdiction

VICTORIA – British Columbia is changing provincial legislation to remove barriers for Indigenous Peoples exercising jurisdiction over child and family services, becoming the first province in Canada to expressly recognize this inherent right within provincial legislation.

“This is a pivotal shift toward real and meaningful change that respects Indigenous rights and improves services and supports for Indigenous children, youth and families,” said Premier John Horgan. “B.C. was the first province to bring the United Nations Declaration on the Rights of Indigenous Peoples into provincial law and it’s fulfilling to see how that bold action continues to create reforms that support reconciliation and make life better for Indigenous communities.”

The amendments, the largest in more than 25 years, will respect the inherent rights of Indigenous communities to provide their own child and family services, and to keep Indigenous children safely connected to their cultures and their communities.

“The colonial era of the Province controlling child welfare must come to an end — and this legislation cannot be passed soon enough,” said Grand Chief Stewart Phillip, Union of BC Indian Chiefs. “This legislation holds the promise of finally affirming the inherent rights of First Nations to ensure our children are with their families, communities and people. It brings me incredible joy to think about this change in my lifetime, and for my grandchildren and great grandchildren. As Indigenous Peoples, we have the right to exercise self-determination over our children and we are glad this is finally being recognized through law.”

The changes will also help to further address and reduce the disproportionate number of Indigenous children in provincial care.

“We know that the current child-welfare system is a continuation of harmful colonial practices, and the solution is to re-assert jurisdiction over their children, youth and families in accordance with their customs, traditions and Indigenous laws,” said Mitzi Dean, Minister of Children and Family Development. “These amendments are a significant step in the creation of an approach that properly respects the inherent rights and legal orders of Indigenous Peoples and reshapes the provincial laws to focus on the best interests of Indigenous children.”

The modernized legislation will support Indigenous Peoples to re-establish, develop and exercise child-welfare laws for their community members and to recreate their own models for child and family service delivery, including family support, child protection and adoption services. Upholding jurisdiction will have an unparalleled positive impact on Indigenous children, youth and families, respecting and facilitating connections to communities, and resulting in healthier lifelong outcomes.

The amendments were developed in consultation and co-operation with Indigenous

rightsholders, Modern Treaty Nations, Indigenous Governing Bodies (IGBs), Métis Nation BC and Indigenous partners. This is an important step in meeting government's commitments under the Declaration on the Rights of Indigenous Peoples Act and achieving the goals in the Declaration Act Action Plan, Theme 1: Self Determination and Inherent Right of Self Government.

Quick Facts:

The proposed amendments will:

- recognize that the Child, Family and Community Service Act (CFCSA) must be administered and interpreted in accordance with Indigenous communities' inherent right of self-government with respect to child and family services;
- enable IGBs to assume jurisdiction over child-welfare services provided to an Indigenous child in accordance with Indigenous laws;
- strengthen collaboration and enable consent-based decision making with Indigenous communities on adoption placements for Indigenous children;
- ensure that both Treaty First Nations and non-Treaty First Nations have opportunities to exercise jurisdiction in these areas;
- enable information sharing between the Province and IGBs to help IGBs plan for and exercise jurisdiction;
- establish a new Indigenous child-welfare director position in the Ministry of Children and Family Development to provide guidance and advice to CFCSA directors and their delegates in navigating a multi-jurisdictional child and family services model; and
- enable joint and consent-based agreements to be made in accordance with the Declaration on the Rights of Indigenous Peoples Act for relevant powers under the Adoption Act and the CFCSA.

Learn More:

Read the United Nations Declaration on the Rights of Indigenous Peoples: https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

Read the Truth and Reconciliation Commission of Canada's Calls to Action: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

Read the federal act respecting First Nations, Inuit and Métis children, youth and families: <https://laws.justice.gc.ca/eng/acts/F-11.73/page-1.html>

Learn about Modern Treaty Nations in B.C.: <https://moderntreatyalliancebc.ca/>

For information on the Declaration on the Rights of Indigenous Peoples Act and to download a copy of the action plan, visit: <https://declaration.gov.bc.ca>

Two backgrounders follow.

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BACKGROUND 1

For Immediate Release
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Office of the Premier
Ministry of Children and Family Development

What people are saying about changes to the Child, Family and Community Service Act (CFCSA) and Adoption Act

Hegus John Hackett, Tla'amin Nation –

“As a modern Treaty Nation, łaʔamɪn Nation understands the significance of achieving full governance jurisdiction for our čičuy and ʔəʔaʔə (children and families). These updates to the CFCSA represent a positive step toward implementation of UNDRIP, but there is still much work to do. Our Nation is committed to working in partnership with the Province on future reforms to ensure Indigenous governments in B.C. are supported and appropriately resourced to achieve full jurisdiction. ʔoʔʔaymštam (we will raise the children).”

Chief Lydia Hwitsum, Cowichan Tribes –

“The legislative amendments to the Child, Family and Community Service Act represent a significant step towards reconciliation by recognizing that for the last 150 years, the laws and policies regarding Indigenous children and child welfare have had severe impacts on our Cowichan families. The recognition of our inherent right to govern and provide services for our children and families provides a new and positive path forward. This day heralds the achievement of the goal pursued for many years by successive Chiefs and Councils. Cowichan Tribes look forward to working together with the Province on the implementation of this new direction.”

Acting Chief Valerie Cross, Tsawwassen First Nation –

“Our children are our future. Our children need to be wrapped in love and Tsawwassen culture, and we achieve that by being able to care for them ourselves. This legislation is a step in the right direction to uphold Treaty Rights and jurisdiction. We look forward to continuing to work with British Columbia on dismantling the harmful child welfare system that has caused and continues to cause too much harm to Indigenous families and children.”

Acting Kukpi7 George Lampreau, Simpcw First Nation –

“We wish to express gratitude with the ministry's invitation to our proud Simpcw First Nation to participate in the development of its legislative amendments to the CFCSA and Adoption Act, that will support all Indigenous Nations in British Columbia to bring their own laws into legal force and effect. Earlier this year on April 12th, our Nation signed the historic first-ever Tcwesétmentem ("Walking Together") S. 92.1 Agreement that is legally binding on all social workers in B.C., which ensures our involvement in all child-welfare matters under the B.C. CFCSA, until such time as we take over with our own child welfare law. I genuinely believe that Indigenous Peoples around B.C. will recognize how Indigenous children and youth can anticipate a brighter future through this act of reconciliation.”

President Eva Clayton, Nisga'a Lisims Government –

“These necessary and overdue changes to child and family service law in British Columbia will enable and support the Nisga'a Lisims Government as we exercise our inherent rights and jurisdiction over children and families. Child-welfare law and policy will finally be aligned with the human rights of our people in the United Nations Declaration on the Rights of Indigenous Peoples, and Section 35 of the Constitution Act, 1982. For generations, our leaders and people pushed for this day, and we have clear assurance that our Treaty rights will be given the proper interpretation in light of the UN Declaration. In the near future, the Nisga'a Lisims Government will pass laws for our children and family and have them apply to support them, according to our culture and values, wherever they reside.”

Cheryl Casimer, First Nations Summit Political Executive –

“First Nations children are strong and resilient. They deserve this impactful legislation that affirms their rights, their parents' and grandparents' commitment to them, and First Nations' duty to ensure there is an opportunity for them to be raised with their traditional values, language, culture and identity. This legislation paves a new path towards a brighter future for Child and Family Services in British Columbia, one that puts a focus on successful outcomes for our children.”

Regional Chief Terry Teegee, BC Assembly of First Nations –

“The forced removal of children for generations, through residential schools and the child-welfare system has been a deep source of pain and injustice. Today, that era comes to an end in British Columbia. Will it be easy to make all the changes needed when it has been entrenched for so long that First Nations have not been seen as good parents due to racism and stereotypes? No, it will not, but we will never go back to those days again, and together we will work to ensure that children grow up to be the people they wish to be with the love and support of our peoples in every part of their lives.”

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BACKGROUND 2

For Immediate Release
2022PREM0061-001594
Oct. 26, 2022

Office of the Premier
Ministry of Children and Family Development

Child, Family and Community Service Act and Adoption Act change to support Indigenous jurisdiction

Updated Nov. 15, 2022, for clarification

- Indigenous children are disproportionately over-represented in B.C.'s child and family services system, comprising less than 10% of the child population yet representing 68% of the children in provincial care.
- In 2018, the Ministry of Children and Family Development made initial amendments to the Child, Family and Community Service Act to allow greater involvement of Indigenous communities with children who are at risk and provide a pathway for Indigenous children to stay connected to their culture and communities.
- In January 2020, federal legislation, an act respecting First Nations, Inuit and Métis children, youth and families, came into force, affirming the inherent right of Indigenous Peoples to exercise jurisdiction over child and family services.
- That federal act set B.C. on a path to a multi-jurisdictional model of child and family services in B.C. and a future where appropriate services are provided regardless of where an Indigenous child may reside in the province.
- The federal act is unique. It sets a legal framework for the exercise of jurisdiction that is grounded in a citizenship-based model. That means the laws follow the person, not the geography, so a First Nation in B.C. will have affirmed jurisdiction to provide care and services within the province, regardless of whether their members are on title lands or not.
- Amendments to the Child, Family and Community Service Act and the Adoption Act are needed to ensure that provincial and Indigenous child and family service systems are in alignment with the federal act, the Declaration on the Rights of Indigenous Peoples Act and the United Nations Declaration on the Rights of Indigenous Peoples.
- The changes will also ensure the safety and well-being of children and families and overcome barriers within the Child, Family and Community Service Act to provide collaborative child and family services practice during this ongoing transition.
- Four Indigenous governing bodies in B.C. are engaged in collaborative discussions with the Province and Canada to exercise their jurisdiction:
 - Cowichan Tribes
 - Gwa'sala-'Nakwaxda'xw Nations
 - Splatshin First Nation
 - Sts'ailes First Nation
- These amendments support co-ordination agreement development and implementation between the Indigenous Governing Bodies that are exercising jurisdiction for their people and the provincial government with the goal of harmonizing service delivery to reduce the risk of gaps.

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Canada: What Always Was, Now Is: Bill 38 And The Provincial Affirmation Of Indigenous Jurisdiction Over Child And Family Services

01 December 2022 by [Hannah Roche](#) and [Merle Alexander](#)

Miller Titerle + Company

Retrieved: <https://www.mondaq.com/canada/indigenous-peoples/1256436/what-always-was-now-is-bill-38-and-the-provincial-affirmation-of-indigenous-jurisdiction-over-child-and-family-services#:~:text=Bill%2038%20will%20amend%20several%20key%20pieces%20of,Act%20and%20the%20Public%20Guardian%20and%20Trustee%20Act.>

Co-jurisdiction is here. For the first time since contact, since a clash of sovereignties, since a stolen generation, then another, and then another, there is hope that Indigenous peoples in British Columbia will find their children, keep their children, and make laws about their children that are respected by all governments.

On November 24, 2022, *Bill 38: Indigenous Self-Government in Child and Family Services Amendment Act* received Royal Assent. Bill 38 will amend several key pieces of provincial legislation, including the *Adoption Act*, the *Child, Family and Community Service Act* ("**CFCSA**"), and consequential amendments to the *Infants Act* and the *Public Guardian and Trustee Act*. As a result, inherent Indigenous jurisdiction over child and family services is now affirmed both provincially and federally.

What does Bill 38 mean for Indigenous peoples?

Bill 38 is specifically about Indigenous peoples' inherent right to jurisdiction over children and families, but it is also more broadly about the revitalization of Indigenous legal orders.

Apart from all its specific amendments (discussed below), Bill 38 accomplishes five main things.

First, it offers Nations deciding whether to assert jurisdiction over child and family services through codification the assurance that their laws and legal orders will be paramount to provincial law.

Second, it allows flexibility for how Nations choose to exercise their sovereignty, whether by agreement, the exercise of law-making power, or a combination of the two.

Third, it provides some measure of certainty for Indigenous Nations in British Columbia in the area of child and family services in light of the ongoing constitutional challenge to *An Act respecting First Nations, Inuit and Métis children, youth and families* ("**Bill C-92**"), set to be heard by the Supreme Court of Canada next week.

Fourth, it opens the door to future legislative amendments that affirm long-standing Indigenous jurisdiction in other arenas.

Finally, it attests to the decades-long, tireless efforts of Nations, communities, leaders, elders, families, and advocates who never gave up and never lost sight of Indigenous communities' most precious and sacred resource—children.

What is unique about Bill 38?

The first change we see is to definitions under the *Adoption Act* and the *CFCSA*. Archaic terms like "Indian band" and "aboriginal community" are replaced with "First Nation," "Indigenous community," and "Treaty

First Nation." The terms "Indigenous peoples" and "Indigenous governing body" have been added with definitions harmonized with those Bill C-92 and the provincial *Declaration on the Rights of Indigenous Peoples Act* ("**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.

In several instances, the phrase "consult and cooperate" replaces the word "involve". This change emphasizes that a central purpose of the amendments is to increase the Province's responsibility to meaningfully engage with Indigenous communities, marking a shift from a regime that is colonially and externally imposed on Indigenous families to one that is determined with the appropriate respect for Indigenous sovereignty.

Adoption Act

Here are some key amendments to the *Adoption Act*:

- **Affirmation of self-government.** A new principle – the "**self-government principle**" – is codified, which requires that, where an Indigenous child's legal guardian is the state, 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 UNDRIP.
- **Free, prior and informed consent.** 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 extraprovincial agency).
- **Shared decision-making.** A new division is created titled "Agreements Respecting the Declaration on the Rights of Indigenous Peoples Act". 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.
- **Obligations on service delivery staff.** Service delivery staff, including "child protection" workers, 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.
- **The best interests of Indigenous children are uplifted in three ways.** First, 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 and familial connection, and customary planning. Second, considerations related to substantive equality are included to ensure children do not experience discrimination related to their Indigenous identity, ancestry, family status, etc. Third, the cultural rights of Indigenous children are protected and promoted with the obligation of the director, or adoption agency, to make all reasonable efforts to obtain and preserve information relating to a child's Indigenous cultural identity and community and to share that information with the child or the child's adoptive parent.

CFCSA

Here are some key amendments to the *CFCSA*:

- **Affirmation of self-government.** The "self-government principle" is also included in the amendments to the *CFCSA*.
- **Indigenous law is law.** A new section of the Act "Part 1.1 – Introductory Provisions Relating to Indigenous Laws and Indigenous child" explicitly affirms that Indigenous laws have the force of law in British Columbia, and grants Indigenous laws paramountcy over the *CFCSA* to the extent of any conflict or inconsistency.

- **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.
- **Disputes over jurisdiction cannot affect a child's care.** Any disputes about the application of Indigenous laws are to be resolved through consultation and cooperation (including through mediation or another form of alternative dispute resolution), and there is now an onus on the director to ensure any disputes do not result in a disruption of services to the child.
- **Taking back jurisdiction.** 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. 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 make representations respecting customary and traditional ways of caring for children in service of the child's best interests.
- **Indigenous authorities occupy meaningful space.** 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 *CFCSA* when an Indigenous authority intends to provide services to an Indigenous child. The director's withdrawal will cancel any interim, supervision, or temporary custody orders respecting the child.
- **Shared decision-making.** Like the *Adoption Act*, a new division is created 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*.
- **Best interests of Indigenous children.** The amendments include the principles of the best interests of Indigenous children, substantive equality, and cultural continuity.
- **Poverty does not equal apprehension.** The amendments 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".
- **Indigenous Child Welfare Director.** The *CFCSA* amendments create a new Indigenous Child Welfare Director have the same role and scope of authority as other directors but with 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.

What's next?

Co-development of regulations. The Order in Council giving Bill 38 Royal Assent gives effect to 68% of Bill 38's sections. The remaining provisions of Bill 38 are expected to be brought into force through a series of regulations. British Columbia has committed to the co-development of these regulations with Indigenous Nations.

Drafting child and family services laws. Now is a good time for Nations to assert jurisdiction and begin the process of drafting a child and family services law that reflects longstanding legal orders.

Drafting shared decision-making agreements. Nations can also choose to enter section 6 or section 7 *DRIPA* agreements for co-management in the delivery of child and family services.

We share a common goal with our clients: that Indigenous Nations establish and retain jurisdiction and control over their children so that, one day soon, there are no more Indigenous children in the provincial child welfare system.

We are in a new era and there is work to be done. We are with you and we remain hopeful.

Paradigm Shift in the CFCSA — Indigenous Children Cannot Afford to Wait

Frances Rosner (BARTALK, April 2023)

In recognition of the ongoing legacy of harm caused by the forced removal of Indigenous children from their families and communities in the child welfare system, the B.C. government has taken significant steps to overhaul the Child, Family and Community Service Act (CFCSA). Bill 38, the Indigenous Self-Government in Child and Family Services Amendment Act, passed on November 24, 2022 — it recognizes the inherent right of Indigenous communities to self-government and made B.C. the first province in Canada to pass legislation enabling Indigenous Governing Bodies (IGB's) to assume jurisdiction over child and family services.

Importantly, Bill 38 was developed in consultation with Indigenous rights holders, Treaty First Nations, Métis Nation B.C. and IGB's in keeping with B.C.'s commitments under the Declaration on the Rights of Indigenous Peoples Act (DRIPA) to reconciliation — by removing barriers for Indigenous communities to self-government and by paving the way for IGB's to exercise jurisdiction over child and family services. Given that Indigenous children continue to be over-represented in the foster care system at a rate of 68% despite comprising less than 10% of the child population in B.C., the changes are welcomed by Indigenous leaders, including Grand Chief Stewart Phillip, Union of BC Indian Chiefs: "The colonial era of the Province controlling child welfare must come to end — and the legislation cannot be passed soon enough."

Key amendments include the following: the CFCSA must be administered and interpreted in accordance with Indigenous communities' inherent right of self-government; enables IGB's to assume jurisdiction over child-welfare services in accordance with Indigenous laws; strengthens collaborative and consent-based decision-making with Indigenous communities for adoption placements, and ensures that both Treaty First Nations and non-Treaty First Nations have opportunities to exercise jurisdiction in these areas; enables information sharing between the province and IGB's to assist IGB's with planning and implementation of jurisdiction; establishes a new child-welfare director in the province to provide guidance and advice to CFCSA directors and their delegates to help navigate a multi-jurisdictional child and family services system; and enables consent based coordination agreements to be made respecting jurisdictional powers under the Adoption Act and CFCSA.

The amendments stipulate that jurisdiction may only be conferred on and exercised by IGB's, a term defined under DRIPA as "an entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by S. 35 of the Constitution Act, 1982." In other words, for Indigenous communities to take back jurisdiction over child and family services — they must be formally recognized as IGB's. Thus far, despite that we have over 200 First Nations and Indigenous communities in B.C. — we presently have only 11 recognized IGB's in the province.

That said, the full remedial impact of the amendments will depend greatly on the establishment of IGB's, the capacity of IGB's to develop their own child and family services laws, and then the ability to successfully enter agreements with the province or tripartite agreements with the provincial and federal governments. This is clearly not an easy process, as the CFCSA amendments were drafted in part to align with the federal legislation — An Act respecting First Nations, Inuit and Metis children, youth and families, that came into force January 1, 2020. The federal Act similarly established a process wherein Indigenous communities recognized as IGB's could take back jurisdiction through tripartite coordination agreements. More than three years later, we do not have any IGB's in the province with a ratified coordination agreement. Therefore, while in this waiting period, hopefully stakeholders will amend their practices to comport with the spirit and intent of the changes underway by working diligently toward keeping Indigenous children with their families and in their communities, as children can't afford to wait.

<https://www.cbabc.org/BarTalk/Articles/2023/April/Columns/Paradigm-Shift-in-the-CFCSA-%E2%80%94-Indigenous-Children#:~:text=Bill%2038%2C%20the%20Indigenous%20Self-Government%20in%20Child%20and,to%20assume%20jurisdiction%20over%20child%20and%20family%20services.>