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Legislative Assembly of British Columbia

BILL 38

**INDIGENOUS SELF-GOVERNMENT IN CHILD
AND FAMILY SERVICES AMENDMENT ACT**

Honourable Mitzi Dean
Minister of Children and Family Development

Explanatory Notes

CLAUSE 1: *[Adoption Act, section 1]*

- adds the definitions of “First Nation child”, “Indigenous child”, “Indigenous community information”, “Indigenous governing body” and “Indigenous peoples”;
- amends the definitions of “designated representative”, “relative” and “treaty first nation”;
- repeals the definitions of “aboriginal child”, “aboriginal community” and “Indian band”.

MINISTER OF CHILDREN AND FAMILY DEVELOPMENT

BILL 38 – 2022

**INDIGENOUS SELF-GOVERNMENT IN CHILD
AND FAMILY SERVICES AMENDMENT ACT**

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

PART 1 – ADOPTION ACT AMENDMENTS

1 Section 1 of the Adoption Act, R.S.B.C. 1996, c. 5, is amended

(a) in subsection (1) by repealing the definitions of “aboriginal child” and “aboriginal community”,

(b) in subsection (1) in the definition of “designated representative” by striking out “an Indian band, an aboriginal community or a treaty first nation” and substituting “a First Nation, an Indigenous community or a Treaty First Nation”,

(c) in subsection (1) by adding the following definition:

“First Nation 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 a director or an adoption agency, is a child belonging to a First Nation; ,

(d) in subsection (1) by repealing the definition of “Indian band”,

(e) in subsection (1) by adding the following definitions:

“Indigenous child” means a child

- (a) who is a First Nation child,
- (b) who is a Nisga’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,

CLAUSE 1: *[Adoption Act, section 1 – continued]*

- (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 a director or an adoption agency, is a child belonging to an 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 Nisga’a child, the location of the Nisga’a Nation or the child’s Nisga’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 Nisga’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* ; ,

(f) in subsection (1) by repealing the definition of “relative” and substituting the following:

“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; ,

(g) in subsection (1) by repealing the definition of “treaty first nation” and substituting the following:

“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**

(h) by adding the following subsection:

- (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).

CLAUSE 2: *[Adoption Act, section 3]*

- clarifies one of the factors in relation to the best interests of a child;
- is consequential to the addition by this Bill of section 3.1 to the Act.

CLAUSE 3: *[Adoption Act, sections 3.1 and 3.2]*

- provides for additional best interests of a child if the child is an Indigenous child;
- provides for a self-government principle in accordance with section 35 of the *Constitution Act, 1982* relating to the interpretation and administration of the Act in relation to the adoption of an Indigenous child in certain circumstances.

2 Section 3 is amended

- (a) *in subsection (1) (g) by adding* “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” *after* “views”, *and*
- (b) *by repealing subsection (2).*

3 The following sections are added to Part 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.

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 a director of child protection, or
 - (b) in respect of whom a 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*.

CLAUSE 4: *[Adoption Act, section 6]* provides for additional requirements before placing an Indigenous child for adoption.

CLAUSE 5: *[Adoption Act, section 7]* provides for requirements relating to the placement of an Indigenous child for adoption.

4 Section 6 is amended

(a) in subsection (1) by striking out “and” at the end of paragraph (f), by adding “, and” at the end of paragraph (g) (ii) and by adding the following paragraph:

- (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. , **and**

(b) by adding the following subsection:

- (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.

5 Section 7 is repealed and the following substituted:

Before placement of Indigenous child for adoption

- 7 (1) Before placing an Indigenous child for adoption, a director or an adoption agency must 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 Nisga’a child, a designated representative of the Nisga’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 Nisga’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 a director of child protection, or
 - (b) in respect of whom a director of child protection is the personal guardian under section 51 of the *Infants Act*.

CLAUSE 6: *[Adoption Act, section 8]* provides for requirements relating to the placement of an Indigenous child for adoption.

CLAUSE 7: *[Adoption Act, section 13]* provides for consents relating to the placement of an Indigenous child for adoption.

CLAUSE 8: *[Adoption Act, section 37]* updates wording for consistency with amendments made by this Bill to the Act.

CLAUSE 9: *[Adoption Act, section 46]* updates wording for consistency with amendments made by this Bill to the Act.

6 Section 8 is amended by adding the following subsection:

- (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.

7 Section 13 is amended

(a) in subsection (3) by striking out “and” at the end of paragraph (a), by adding “, and” at the end of paragraph (b) and by adding the following paragraph:

- (c) in the case of an Indigenous child, the consent of the applicable Indigenous governing body. ,

(b) in subsection (5) by striking out “If a child” and substituting “Subject to subsection (6), if a child”, and

(c) by adding the following subsection:

- (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.

8 Section 37 (7) is repealed and the following substituted:

- (7) For certainty, in the case of an Indigenous child, an adoption order does not affect any rights of the child as an Indigenous child.

9 Section 46 is amended

(a) in subsection (1) by striking out “an Indian band or aboriginal community” and substituting “a First Nation or Indigenous community”, and

(b) by repealing subsection (2) and substituting the following:

- (2) For certainty, in the case of an Indigenous person, an adoption recognized under subsection (1) does not affect any rights of the person as an Indigenous person.

CLAUSE 10: *[Adoption Act, section 62]*

- updates wording for consistency with amendments made by this Bill to the Act;
- provides for the disclosure of information relating to an Indigenous child.

CLAUSE 11: *[Adoption Act, sections 63, 64 and 71]* updates wording for consistency with amendments made by this Bill to the Act.

CLAUSE 12: *[Adoption Act, Division 1 of Part 6]* adds a Division with respect to agreements under the *Declaration on the Rights of Indigenous Peoples Act*.

10 Section 62 is amended

(a) by repealing subsection (1) and substituting the following:

(1) If Indigenous community information was not provided to an Indigenous child or a prospective adoptive parent under section 6 or 8, a director or an adoption agency must, after the adoption of the child, 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. ,

(b) in subsection (2) by striking out “aboriginal child” and substituting “Indigenous child”,

(c) in subsection (2) (a) by striking out “an Indian band” and substituting “a First Nation” and by striking out “the band” and substituting “the First Nation”,

(d) in subsection (2) (a.2) by striking out “treaty first nation” in both places and substituting “Treaty First Nation”, and

(e) in subsection (2) (b) by striking out “not described by paragraph (a), (a.1) or (a.2), by a designated representative of an aboriginal community” and substituting “not a First Nation child, a Nisga’a child nor a Treaty First Nation child, by a designated representative of an Indigenous community”.

11 Sections 63 (1) (c), 64 (1) (d) and 71 (1), (3) and (5) are amended by striking out “treaty first nation” wherever it appears and substituting “Treaty First Nation”.

12 The following Division is added to Part 6:

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

Definitions and interpretation for this Division

74.1 In this Division:

“**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;

CLAUSE 12: *[Adoption Act, Division 1 of Part 6 – continued]*

“**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*.

**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.

Required conditions in agreements

- 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.

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

CLAUSE 12: *[Adoption Act, Division 1 of Part 6 – continued]*

CLAUSE 13: *[Adoption Act, heading to Division 2 of Part 6]* is consequential to amendments made by this Bill to the Act.

CLAUSE 14: *[Adoption Act, section 76]*

- updates wording for consistency with amendments made by this Bill to the Act;
- provides that the minister may enter into agreements with entities representing Indigenous communities and Indigenous governing bodies.

CLAUSE 15: *[Adoption Act, section 79]* provides for immunity from legal proceedings.

CLAUSE 16: *[Adoption Act, section 91]* updates wording for consistency with amendments made by this Bill to the Act.

- (c) the following terms of the agreement have the force of law:
 - (i) terms identifying the person who is exercising, or providing consent in relation to, a statutory power of decision or a statutory power in accordance with the 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 the agreement.

13 *The following heading is added before section 75:*

Division 2 – Other Administrative and Legal Issues .

14 *Section 76 is amended*

(a) by repealing paragraph (a) and substituting the following:

(a) a First Nation; ,

(b) by repealing paragraph (a.2) and substituting the following:

(a.2) a Treaty First Nation; , *and*

(c) by adding the following paragraphs:

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

(a.4) any Indigenous governing body not described in paragraphs (a), (a.1), (a.2) or (a.3); .

15 *Section 79 is repealed and the following substituted:*

Immunity from legal proceedings

- 79** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a person because of anything done or omitted
- (a) in the exercise or intended exercise of a power under this Act, or
 - (b) in the performance or intended performance of a duty under this Act.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.
- (3) Subsection (1) does not absolve the government or an Indigenous governing body from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government or Indigenous governing body would be vicariously liable if this section were not in force.

16 *Section 91 (2) (b) is amended by striking out “treaty first nations, Indian bands and aboriginal communities” and substituting “Treaty First Nations, First Nations and Indigenous communities”.*

CLAUSE 17: *[Child, Family and Community Service Act, section 1]*

- adds the definitions of “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”;
- repeals the definitions of “First Nation” and “First Nation land”.

**PART 2 – CHILD, FAMILY AND
COMMUNITY SERVICE ACT AMENDMENTS**

17 Section 1 (1) of the Child, Family and Community Service Act, R.S.B.C. 1996, c. 46, is amended

(a) in the definition of “director” by adding “, 91.1 or 91.2” after “section 91”,

(b) by adding the following definition:

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

(c) by repealing the definition of “First Nation”,

(d) by repealing the definition of “First Nation child” and substituting the following:

“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 a director, is a child belonging to a First Nation; ,

(e) by repealing the definition of “First Nation land”,

(f) by adding the following definition:

“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; ,

(g) by repealing the definition of “Indigenous child” and substituting the following:

“Indigenous child” means a child

- (a) who is a First Nation child,
- (b) who is a Nisga’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 authority confirms, by advising a director, is a child belonging to an Indigenous community; , **and**

CLAUSE 17: *[Child, Family and Community Service Act, section 1 – continued]*

CLAUSE 18: *[Child, Family and Community Service Act, section 3]* provides for

- principles that apply to services respecting Indigenous children and families, and
- principles that apply in respect of discrimination, substantive equality, rights and culture and, in the case of Indigenous children, cultural continuity.

CLAUSE 19: *[Child, Family and Community Service Act, Part 1.1]* adds a Part with respect to self-government principles, Indigenous laws, directors' duties in relation to Indigenous children, considerations relating to duties and service provision and dispute resolution.

(h) by adding the following definitions:

“**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; .

18 Section 3 is amended

(a) by repealing paragraph (b) and substituting the following:

(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; , **and**

(b) by adding the following paragraphs:

(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;

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

19 The following Part is added:

PART 1.1 – INTRODUCTORY PROVISIONS RELATING TO INDIGENOUS LAWS AND INDIGENOUS CHILDREN

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*;

CLAUSE 19: *[Child, Family and Community Service Act, Part 1.1 – continued]*

- (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.

**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.

Duties respecting Indigenous children

- 4.3** (1) When exercising powers and performing duties 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 sections 50.02 and 50.04.
- (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, as applicable:
- (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 agreement referred to in paragraph (b) of this subsection;

CLAUSE 19: *[Child, Family and Community Service Act, Part 1.1 – continued]*

CLAUSE 20: *[Child, Family and Community Service Act, sections 12.2 and 12.3]* makes housekeeping amendments.

CLAUSE 21: *[Child, Family and Community Service Act, section 13]* clarifies circumstances when a child does not need protection.

- (b) in accordance with an agreement
 - (i) entered into under this Act, or
 - (ii) referred to in Division 1 of Part 7.

**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 Indigenous authority and, if requested by the Indigenous authority, provide written reasons to the Indigenous authority.

Disputes relating to Indigenous laws

- 4.5** In the event of a dispute under this Act about the application of an Indigenous law or whether a director's provision of service 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.

20 *Sections 12.2 (6) and 12.3 (1) are amended by striking out "19th" and substituting "nineteenth".*

21 *Section 13 is amended by adding the following subsection:*

- (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.

CLAUSE 22: *[Child, Family and Community Service Act, section 14]* provides that a person with reason to believe an Indigenous child needs protection may report the matter to an Indigenous authority.

CLAUSE 23: *[Child, Family and Community Service Act, section 16]* provides for the reporting of matters under the Act to Indigenous authorities.

22 Section 14 is amended

(a) in subsection (1) by striking out “A person who has reason to believe that a child” and substituting “Subject to subsection (1.1), a person who has reason to believe that a child, including an Indigenous child,”, and

(b) by adding the following subsection:

(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) of this section if the Indigenous authority confirms to the person that the Indigenous authority will assess the information in the report.

23 Section 16 is amended

(a) by repealing subsection (1) (b) and substituting the following:

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

(b) by repealing subsection (1.1) and substituting the following:

(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 an Indigenous law applies to the child and that the Indigenous authority will assess the information in the report. ,

(c) by repealing subsection (1.2) (c) and substituting the following:

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

(d) by repealing subsection (2) (b) and (d) and substituting the following:

(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 Nisga’a child, the Nisga’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 Nisga’a child nor a Treaty First Nation child, the child’s Indigenous community;

(iii) any person the director considers appropriate,

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

CLAUSE 23: *[Child, Family and Community Service Act, section 16 – continued]*

CLAUSE 24: *[Child, Family and Community Service Act, section 22]* provides for mediation and alternative dispute resolution mechanisms if there is a dispute about the application of Indigenous law to a matter under the Act.

CLAUSE 25: *[Child, Family and Community Service Act, section 24]* is consequential to amendments made by this Bill to the Act.

CLAUSE 26: *[Child, Family and Community Service Act, section 32]* is consequential to amendments made by this Bill to the Act.

CLAUSE 27: *[Child, Family and Community Service Act, section 33.01]* is consequential to the addition by this Bill of section 33.06 to the Act.

CLAUSE 28: *[Child, Family and Community Service Act, sections 33.02 to 33.06]*

- adds provisions that provide for circumstances in which a director must withdraw from a proceeding before a presentation hearing, or before the conclusion of a presentation hearing, in respect of an Indigenous child;
- provides for the procedures for applications to the Provincial Court for an order in relation to Indigenous law;
- provides for the withdrawal of the director;
- provides for the director's report to the Provincial Court;
- provides for the effect of the withdrawal on certain orders.

(e) by repealing subsections (2.1) and (2.2) and substituting the following:

- (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.

24 *Section 22 is amended*

(a) by renumbering the section as section 22 (1), and

(b) by adding the following subsection:

- (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.

25 *Section 24 (2) is amended by striking out “79.1” and substituting “79.2”.*

26 *Section 32 (1) (a.1) is amended by adding “or 33.05” after “section 33.01 (1)”.*

27 *Section 33.01 (3) and (4) is repealed.*

28 *The following sections are added to Division 3 of Part 3:*

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.

CLAUSE 28: *[Child, Family and Community Service Act, sections 33.02 to 33.06 – continued]*

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 that requested the withdrawal is or will be providing Indigenous child and family services in accordance with an Indigenous law, and
 - (b) provide information about an application that may be made under section 33.04, including the time period for making the application.

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 that was provided in accordance with 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 Nisga’a child, a designated representative of the Nisga’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 Nisga’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.

CLAUSE 28: *[Child, Family and Community Service Act, sections 33.02 to 33.06 – continued]*

- (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 Nisga'a child, a designated representative of the Nisga'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 Nisga'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 the following persons appear at the commencement of the hearing, they are entitled to be parties at the hearing:
 - (a) the director;
 - (b) a person referred to in subsection (6) (b) to (e).

CLAUSE 28: *[Child, Family and Community Service Act, sections 33.02 to 33.06 – continued]*

- (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 (2).
- (9) A hearing of the application must be concluded as soon as possible.

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 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 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.

CLAUSE 28: *[Child, Family and Community Service Act, sections 33.02 to 33.06 – continued]*

CLAUSE 29: *[Child, Family and Community Service Act, section 48]* is consequential to the addition by this Bill of section 48.6 to the Act.

CLAUSE 30: *[Child, Family and Community Service Act, sections 48.1 to 48.6]*

- adds provisions that provide for circumstances in which a director must withdraw from a proceeding after a presentation hearing in respect of an Indigenous child;
- provides for the procedures for applications to the Provincial Court for an order in relation to Indigenous law;
- provides for the withdrawal of the director;
- provides for the director's report to the Provincial Court;
- provides for applications to the Provincial Court if there is a change in circumstances;
- provides for the effect of the withdrawal on certain orders.

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.

29 *Section 48 (4) and (5) is repealed.*

30 *The following sections are added to Division 4 of Part 3:*

**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.

**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 Nisga'a child, a designated representative of the Nisga'a Lisims Government;
 - (iii) if the child is a Treaty First Nation child, a designated representative of the Treaty First Nation;

CLAUSE 30: *[Child, Family and Community Service Act, sections 48.1 to 48.6 – continued]*

- (iv) if the child is not a First Nation child, a Nisga'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 that requested the withdrawal is or will be providing Indigenous child and family services in accordance with an Indigenous law, and
 - (b) provide 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.

**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 that was provided in accordance with 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.

CLAUSE 30: *[Child, Family and Community Service Act, sections 48.1 to 48.6 – continued]*

- (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, a designated representative of the First Nation;
 - (ii) if the child is a Nisga'a child, a designated representative of the Nisga'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 Nisga'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 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 the following persons appear at the commencement of the hearing, they are entitled to be parties at the hearing:
 - (a) the director;
 - (b) a person referred to in subsection (6) (b) to (e).
- (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 (2).
- (9) A hearing of the application must be concluded as soon as possible.

CLAUSE 30: *[Child, Family and Community Service Act, sections 48.1 to 48.6 – continued]*

**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 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 a 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.

**Change of circumstances –
withdrawal after presentation hearing**

- 48.5** (1) An Indigenous authority may apply to the court for an order that an Indigenous law applies to an Indigenous child if circumstances have changed significantly since the order was made under section 48.3 (8) (a) in relation to the child.
- (2) The Indigenous authority must, at least 12 days before the date of the hearing, serve notice of the application on the director.

CLAUSE 30: *[Child, Family and Community Service Act, sections 48.1 to 48.6 – continued]*

CLAUSE 31: *[Child, Family and Community Service Act, section 50.01]* provides for a director's duty in respect of planning for the needs of an Indigenous child in the continuing custody of 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 the following persons appear at the commencement of the hearing, they are entitled to be parties at the hearing:
 - (a) the director;
 - (b) a person referred to in subsection (3) (b) of this section.
- (5) The court must, after considering whether the circumstances have changed significantly since the order was made and 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 (2).
- (6) A hearing of the application must be concluded as soon as possible.

**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.

31 *Section 50.01 (b) is amended by striking out “make reasonable efforts to involve, at least on an annual basis, the following” and substituting “consult and cooperate, at least on an annual basis, with the following”.*

CLAUSE 32: *[Child, Family and Community Service Act, sections 50.02 to 50.05]*

- adds provisions that provide for circumstances in which an Indigenous authority will have custody of an Indigenous child who is in the continuing custody of the director;
- provides for the procedures for an application to the Provincial Court for an order in relation to Indigenous law;
- provides for the transition to the Indigenous authority;
- provides for applications to the Provincial Court if there is a change in circumstances.

32 *The following sections are added:*

**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 Nisga'a child, a designated representative of the Nisga'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 Nisga'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 subsection (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) provide information about an application that may be made under section 50.03, including the time period for making the application.

CLAUSE 32: *[Child, Family and Community Service Act, sections 50.02 to 50.05 – continued]*

**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 that was provided in accordance with 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 Nisga’a child, a designated representative of the Nisga’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 Nisga’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;

CLAUSE 32: *[Child, Family and Community Service Act, sections 50.02 to 50.05 – continued]*

- (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 the following persons appear at the commencement of the hearing, they are entitled to be parties at the hearing:
- (a) the director;
 - (b) a person referred to in subsection (6) (b) to (e).
- (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 (2).
- (9) A hearing of the application must be concluded as soon as possible.

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 provide written 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.

CLAUSE 32: *[Child, Family and Community Service Act, sections 50.02 to 50.05 – continued]*

- (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 a 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.

**Change of circumstances –
continuing custody order**

- 50.05** (1) An Indigenous authority may apply to the court for an order that an Indigenous law applies to an Indigenous child if circumstances have changed significantly since an order was made under section 50.03 (8) (a) in relation to the child.
- (2) The Indigenous authority 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 the following persons appear at the commencement of the hearing, they are entitled to be parties at the hearing:
 - (a) the director;
 - (b) a person referred to in subsection (3) (b) of this section.
 - (5) The court must, after considering whether the circumstances have changed significantly since the order was made and the application of the Indigenous law to the child, order that
 - (a) the child remains in the custody of the director under the continuing custody order and that the continuing custody order be maintained, or
 - (b) the Indigenous law applies and the continuing custody order is to be cancelled in accordance with section 50.04 (2).
 - (6) A hearing of the application must be concluded as soon as possible.

CLAUSE 33: *[Child, Family and Community Service Act, section 50.06]* provides for requirements before a director requests the placement of an Indigenous child for adoption.

CLAUSE 34: *[Child, Family and Community Service Act, section 50.1]* requires the consent of an Indigenous governing body before a director requests the placement of an Indigenous child for adoption.

CLAUSE 35: *[Child, Family and Community Service Act, section 50.2]* provides for an application to the Provincial Court to dispense with the required consent of an Indigenous governing body before a director requests the placement of an Indigenous child for adoption.

33 *The following section is added:*

Before placement of Indigenous child for adoption

50.06 Before requesting placement of an Indigenous child for adoption, a director must 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 Nisga'a child, a designated representative of the Nisga'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 Nisga'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.

34 *Section 50.1 is amended*

(a) in subsection (1) by striking out "A director" and substituting "Subject to section 50.06, a director", and

(b) in subsection (2) by striking out "or" at the end of paragraph (b), by adding ", or" at the end of paragraph (c) and by adding the following paragraph:

- (d) in the case of an Indigenous child, the applicable Indigenous governing body has consented.*

35 *The following section is added:*

**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 the following:

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

CLAUSE 35: *[Child, Family and Community Service Act, section 50.2 – continued]*

CLAUSE 36: *[Child, Family and Community Service Act, section 51.1]* provides for the Public Guardian and Trustee to continue to be an Indigenous child's property guardian by agreement with an Indigenous authority.

- (ii) if the child is a Nisga'a child, a designated representative of the Nisga'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 Nisga'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.

36 *The following section is added:*

**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) (b), or
 - (ii) a continuing custody order is cancelled under section 50.04 (2) (b).
- (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) When an agreement entered into under subsection (2) terminates, the Public Guardian and Trustee ceases to be the child's property guardian.

CLAUSE 37: *[Child, Family and Community Service Act, section 53]* is consequential to amendments made by this Bill to the Act.

CLAUSE 38: *[Child, Family and Community Service Act, section 54.1]* makes a housekeeping amendment.

CLAUSE 39: *[Child, Family and Community Service Act, section 62]* is consequential to amendments made by this Bill to the Act.

CLAUSE 40: *[Child, Family and Community Service Act, section 74]*

- is consequential to amendments made by this Bill to the Act;
- provides for modifications to the *Freedom of Information and Protection of Privacy Act* in relation to Indigenous governing entities for the purposes of its application to the Act.

CLAUSE 41: *[Child, Family and Community Service Act, section 75]* is consequential to amendments made by this Bill to the Act.

CLAUSE 42: *[Child, Family and Community Service Act, section 75.1]* limits the application of certain disclosure restrictions.

37 Section 53 is amended

(a) in subsection (1) by striking out “or” at the end of paragraph (d) and by adding the following paragraph:

(d.1) the continuing custody order is cancelled under section 50.04 (2) (b), or ,
and

(b) in subsection (2) (b) by adding “subject to an agreement that continues property guardianship under section 51.1,” before “the Public Guardian and Trustee”.

38 Section 54.1 (4) is amended by striking out “subsection 2” and substituting “subsection (2)”.

39 Section 62 (1) is amended by adding “, other than an order under section 33.04 (8) (b), 48.3 (8) (b), 48.5 (5) (b), 50.03 (8) (b) or 50.05 (5) (b),” after “Part 6”.

40 Section 74 is amended

(a) in subsection (1) by striking out “Sections 74 to 79.1” and substituting “Sections 74 to 79”,

(b) in subsection (2) (c) and (d) by striking out “sections 79 and 79.1” and substituting “section 79”, and

(c) in subsection (2) (e) by adding the following subparagraph:

(v.1) section 33 (2) (x) [*Indigenous governing entity*]; .

41 Section 75 is amended

(a) by striking out “Subject to section 79.1 (5), a person” and substituting “A person”, and

(b) in paragraph (a.1) by striking out “24, 79 or 79.1” and substituting “24 or 79”.

42 The following section is added:

Limitation on application – Indigenous authority

75.1 Section 75 does not apply to information that is disclosed to the following:

- (a) an Indigenous governing entity in accordance with section 74 (2) (e) (v.1);
- (b) an Indigenous authority;
- (c) an Indigenous governing body.

CLAUSE 43: *[Child, Family and Community Service Act, section 79]* provides for disclosure without consent in certain circumstances.

CLAUSE 44: *[Child, Family and Community Service Act, section 79.1]* repeals provisions respecting disclosure further to amendments made by this Bill to the Act.

CLAUSE 45: *[Child, Family and Community Service Act, sections 79.2 and 79.3]*

- is consequential to amendments made by this Bill to the Act;
- provides for modifications in relation to Indigenous governing entities for the purposes of applying the *Freedom of Information and Protection of Privacy Act* to the Act.

CLAUSE 46: *[Child, Family and Community Service Act, Division 1 of Part 7]* adds a Division with respect to agreements under the *Declaration on the Rights of Indigenous Peoples Act*.

43 Section 79 is amended

(a) by repealing paragraph (a.3) and substituting the following:

(a.3) made in accordance with an agreement made under this Act, or referred to in Division 1 of Part 7 of this Act, that authorizes or requires the disclosure, , *and*

(b) in paragraph (k) by adding “or the federal Act” after “of this Act”.

44 Section 79.1 is repealed.

45 The following sections are added:

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.

Agreements for access to electronic systems

- 79.3** Subject to the regulations, a director may enter into an agreement with an Indigenous authority to provide to the Indigenous authority access to an electronic system that contains records.

46 The following Division is added to Part 7:

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

Definitions and interpretation for this Division

89.1 In this Division:

- “**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;

CLAUSE 46: *[Child, Family and Community Service Act, Division 1 of Part 7 – continued]*

“**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*.

**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.

Required conditions in agreements

- 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.

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 exercising, or providing consent in relation to, a statutory power of decision or a statutory power in accordance with an agreement;

CLAUSE 46: *[Child, Family and Community Service Act, Division 1 of Part 7 – continued]*

CLAUSE 47: *[Child, Family and Community Service Act, heading to Division 2 of Part 7]* is consequential to amendments made by this Bill to Part 7 of the Act.

CLAUSE 48: *[Child, Family and Community Service Act, section 90]* provides for the minister's authority to enter into agreements under the Act and the authority to provide for the director's manner of exercising powers and performing duties and functions.

CLAUSE 49: *[Child, Family and Community Service Act, section 90.1]* is consequential to amendments made by this Bill to the Act.

- (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.

47 *The following heading is added before section 90:*

Division 2 – Other Authorities for Minister’s Agreements .

48 *Section 90 is repealed and the following substituted:*

Minister’s authority to enter into agreements

- 90** (1) For the purposes of this Act, the minister may enter into an agreement with any of the following:
- (a) a First Nation;
 - (b) the Nisga’a Nation or a Nisga’a Village;
 - (c) a Treaty First Nation;
 - (d) a legal entity representing an Indigenous community;
 - (e) an Indigenous governing body;
 - (f) 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 any of those governments;
 - (g) Community Living British Columbia established under the *Community Living Authority Act*;
 - (h) any person or group of persons.
- (2) An agreement entered into under subsection (1) may provide for the manner in which a director must exercise powers and perform duties and functions.

49 *Section 90.1 is amended*

- (a) by renumbering the section as section 90.1 (1),*
- (b) in subsection (1) by striking out “An Act respecting First Nations, Inuit and Métis children, youth and families (Canada)” and substituting “the federal Act”, and*
- (c) by adding the following subsection:*
 - (2) An agreement made under subsection (1) (a)
 - (a) must include conditions on the use, disclosure and security of information that is provided under the agreement to an Indigenous governing body, and
 - (b) may include the purposes described in section 92.1 (2) (a) or (c).

CLAUSE 50: *[Child, Family and Community Service Act, Division 3 of Part 7]* adds a Division with respect to agreements relating to the Nisga'a Nation or Treaty First Nations.

50 *The following Division is added:*

**Division 3 – Agreements Relating to
the Nisga’a Nation and Treaty First Nations**

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 Nisga’a Final Agreement or the final agreement of a 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 Nisga’a Nation, outside the Nisga’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 Nisga’a Nation or a Treaty First Nation to make an Indigenous law with application in British Columbia,

- (a) in the case of the Nisga’a Nation, outside the Nisga’a Lands, or
- (b) in the case of the Treaty First Nation, outside the treaty lands of the Treaty First Nation.

Purpose for this Division

90.3 The purpose of this Division is to set out processes to enable the Nisga’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 Nisga’a Final Agreement or the final agreements of Treaty First Nations:

- (a) in the case of an Indigenous law of the Nisga’a Nation, in relation to Indigenous child and family services provided outside the Nisga’a Lands;
- (b) in the case of Indigenous laws of the Treaty First Nations, in relation to Indigenous child and family services provided outside the treaty lands of the Treaty First Nations.

Negotiation

90.4 After a request from the Nisga’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 Nisga’a Nation or the Treaty First Nation.

CLAUSE 50: *[Child, Family and Community Service Act, Division 3 of Part 7 – continued]*

Indigenous laws – force of law

- 90.5** (1) Subject to subsection (2), an Indigenous law of the Nisga'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 Nisga'a Nation, to Indigenous child and family services provided outside Nisga'a Lands, and
 - (b) in the case of the Indigenous law of the Treaty First Nation, to Indigenous child and family services provided outside treaty lands of the Treaty First Nation.
- (2) Subsection (1) applies to the Nisga'a Nation or a Treaty First Nation, as applicable, if,
- (a) in the case of an amending agreement,
 - (i) the Nisga'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 Nisga'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 Nisga'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.

CLAUSE 50: *[Child, Family and Community Service Act, Division 3 of Part 7 – continued]*

CLAUSE 51: *[Child, Family and Community Service Act, heading to Division 4 of Part 7]* is consequential to amendments made by this Bill to Part 7 of the Act.

CLAUSE 52: *[Child, Family and Community Service Act, sections 91.1 and 91.2]* provides for the designation of the Provincial Director of Child Welfare and the Indigenous Child Welfare Director.

Effective date

- 90.6** The law-making authority described in section 90.5 (1) may be exercised by the Nisga'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 Nisga'a Nation or the Treaty First Nation consents to the amendment of the Nisga'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 set out in the amending agreement that is later than the dates referred to in subparagraphs (i) and (ii) of this paragraph, 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.

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 Nisga'a Nation or a Treaty First Nation does not limit or otherwise abrogate or derogate from the law-making authority under the Nisga'a Final Agreement or the final agreement of the Treaty First Nation, as applicable.

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 Nisga'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 Nisga'a Nation or the Treaty First Nation, as applicable, has entered into an agreement under this Division, until such time as the Nisga'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).

51 *The following heading is added before section 91:*

Division 4 – Matters Relating to Directors .

52 *The following sections are added:*

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

CLAUSE 52: *[Child, Family and Community Service Act, sections 91.1 and 91.2 – continued]*

CLAUSE 53: *[Child, Family and Community Service Act, section 92.1]* authorizes directors' agreements respecting Indigenous children.

CLAUSE 54: *[Child, Family and Community Service Act, section 96]* is consequential to amendments made by this Bill to the Act.

- (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.

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 exercising their powers and performing 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.

53 Section 92.1 is amended

(a) by repealing subsection (1), and

(b) in subsection (2) (a) by striking out “to involve the First Nation, Nisga’a Nation, Treaty First Nation or Indigenous community in” and substituting “to consult and cooperate with the First Nation, Nisga’a Nation, Treaty First Nation or Indigenous community about”.

54 Section 96 (3) is amended by striking out “the Freedom of Information and Protection of Privacy Act or”.

CLAUSE 55: *[Child, Family and Community Service Act, section 99.1]* confers jurisdiction on the Provincial Court if an Indigenous law provides for that jurisdiction.

CLAUSE 56: *[Child, Family and Community Service Act, section 101]* provides for immunity from legal proceedings.

CLAUSE 57: *[Child, Family and Community Service Act, section 103]* provides for regulation-making authority.

55 *The following section is added:*

**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.

56 *Section 101 is repealed and the following substituted:*

Immunity from legal proceedings

- 101** (1) Subject to subsection (2), no legal proceeding for damages lies or may be commenced or maintained against a person because of anything done or omitted
- (a) in the exercise or intended exercise of a power under this Act, or
 - (b) in the performance or intended performance of a duty under this Act.
- (2) Subsection (1) does not apply to a person referred to in that subsection in relation to anything done or omitted in bad faith.
- (3) Subsection (1) does not absolve the government or an Indigenous governing body from vicarious liability arising out of anything done or omitted by a person referred to in that subsection for which the government or the Indigenous governing body would be vicariously liable if this section were not in force.

57 *Section 103 (2) is amended*

(a) by repealing paragraphs (a) and (d.1), and

(b) by adding the following paragraphs:

- (h.1) respecting any matters that relate to the continuation or termination of property guardianship by the Public Guardian and Trustee in accordance with agreements with Indigenous authorities under sections 51.1 and 53;
- (h.2) respecting agreements for access to electronic systems under section 79.3;
- (q.01) prescribing the powers, duties and functions of the Provincial Director of Child Welfare under section 91.1 (2);
- (q.02) respecting the designation of the Indigenous Child Welfare Director under section 91.2;
- (q.03) prescribing the powers, duties and functions of the Indigenous Child Welfare Director under section 91.2 (3);
- (x) respecting reports presented to the court.

CLAUSE 58: ***[Infants Act, section 16]*** is consequential to amendments made by this Bill to the *Child, Family and Community Service Act*.

CLAUSE 59: ***[Public Guardian and Trustee Act, section 7.1]*** is consequential to amendments made by this Bill to the *Child, Family and Community Service Act*.

PART 3 – CONSEQUENTIAL AMENDMENTS

Infants Act

58 *Section 16 (3) of the Infants Act, R.S.B.C. 1996, c. 223, is amended by striking out “or” at the end of paragraph (a), by adding “or” at the end of paragraph (b) and by adding the following paragraph immediately after paragraph (b):*

- (b.1) who was, until reaching 19 years of age, under the property guardianship of the Public Guardian and Trustee in accordance with an agreement entered into under section 51.1 of the *Child, Family and Community Service Act* .

Public Guardian and Trustee Act

59 *Section 7.1 (b) of the Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383, is amended by striking out “or” at the end of subparagraph (i), by adding “or” at the end of subparagraph (ii) and by adding the following subparagraph:*

- (iii) was under the property guardianship of the Public Guardian and Trustee in accordance with an agreement entered into under section 51.1 of the *Child, Family and Community Service Act*, .

Commencement

60 This Act comes into force by regulation of the Lieutenant Governor in Council.