DRAFT FOR DISCUSSION

2024 CFCSA AMENDMENTS

Ministry of Children and Family Development

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INTRODUCTION

Invitation to co-develop a small set of legislative amendments to the CFCSA for Spring 2024:

- Creating procedural safeguards for circumstances when Directors and Indigenous Authorities request personal health information from public bodies.
- Resolving issues impeding the exercise of Indigenous jurisdiction:
    - ensuring Indigenous Governing Bodies can identify their children,
    - utilizing the Supreme Court of B.C. to appeal disputes; and,
    - making it possible to dispense with notice when transitioning care to an Indigenous Authority.

This scope is driven by a court-mandated timeline. We acknowledge that further amendments may be needed and look forward to your input.

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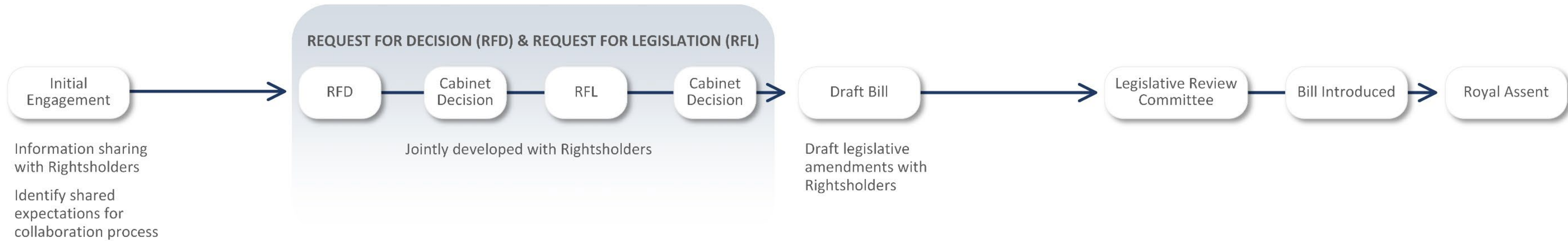
ENGAGEMENT TIMELINE

INITIATE POLICY EXPLORATION		DEVELOPMENT OF RFD & RFL			DRAFT LEGISLATION				PARLIAMENTARY PROCESS
July 2023	August 2023	September 2023	October 2023	November 2023	December 2023	January 2024	February 2024	March 2024	April 2024



Ongoing consultation and cooperation throughout as appropriate

Bill 38 Regulation development (including Indigenous Child Welfare Director) and ongoing discussion of other needed amendments

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ENGAGEMENT PROCESS

Initiate Policy Exploration

Share proposed amendments with rightsholders.

Gather input and confirm policy direction on amendment areas.

Development of materials (RFD and RFL)

Under a non-disclosure agreement, develop materials for cabinet approval that will guide decision making and support legislative drafting.

Rightsholders will share input on how the problem is framed, how the proposed solution is framed, and what the desired outcome is.

Legislative Drafting

Under a non-disclosure agreement, review and provide input on legislative drafts.

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PAUSE

Discussion & Questions

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PROCEDURAL SAFEGUARDS: CFCSA SECTION 96

What is the problem?

A Director may need to access personal health records that are under the control of a public body so that services can be delivered.

The BC Court of Appeal has determined that additional safeguards are needed to provide protections when a Director is accessing personal health information.

What needs to change?

Directors need clear authority to access personal health records controlled by a public body without an individual's consent if:

- This information is necessary to determine if a child needs protection; and,
- Consent cannot be obtained, or obtaining consent would endanger a child’s safety.

These requests also need to be open to administrative review and provincial court review.

Areas for input

Do these changes adequately protect the individual's right to privacy?

How can we amend legislation to ensure that procedural safeguards adequately protect individuals?

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PROCEDURAL SAFEGUARDS – CURRENT LEGISLATION

Director's right to information

96 (1) A director has the right to any information that

(a) is in the custody or control of a public body as defined in the *Freedom of Information and Protection of Privacy Act*, and

(b) is necessary to enable the director to exercise his or her powers or perform his or her duties or functions under this Act.

(2) A public body that has custody or control of information to which a director is entitled under subsection (1) must disclose that information to the director.

(2.1) A director may collect from a person any information that is necessary to enable the director to exercise his or her powers or perform his or her duties or functions under this Act.

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

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PROCEDURAL SAFEGUARDS: BILL 38 SECTION 79.2

What is the problem?

When the CFCSA was amended by Bill 38, a provision was created that requires public bodies to disclose personal health records to Indigenous authorities when requested.

Because this new addition was modeled after an existing provision on disclosing information, the same concerns regarding procedural safeguards apply.

What needs to change?

Indigenous Authorities need clear authority to access personal health records controlled by a public body without an individual's consent if:

- This information is necessary to determine if a child needs protection; and,
- Consent cannot be obtained, or obtaining consent would endanger a child’s safety.

These requests also need to be open to administrative review and provincial court review.

Areas for input

How can we ensure that any amendments balance individual rights to privacy with collective rights to information?

Should this amendment mirror changes made to the requirement for public bodies to disclose information to a Director, or take a different approach?

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PROCEDURAL SAFEGUARDS – CURRENT LEGISLATION

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.

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DEFINITION OF INDIGENOUS CHILD

What is the problem?

Bill 38 introduced a new way for children to be identified as Indigenous: through identification by Indigenous rights holding groups in alignment with UNDRIP.

The way the legislation is currently drafted enables Indigenous Authorities to identify their children, which does not align with the policy intent of enabling all Indigenous rights holding groups to identify who belongs to them, regardless of their exercise of jurisdiction.

What needs to change?

The definition of Indigenous child needs to be amended to ensure that Indigenous rights holding groups can identify their children, regardless of whether they are exercising jurisdiction.

Areas for Input

What do we need to consider to ensure that the proposed solution is inclusive of all Indigenous children?

What do we need to consider to ensure that UNDRIP is upheld?

Do we need to introduce any safeguards?

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INDIGENOUS CHILD – CURRENT LEGISLATION

"Indigenous child" means a child

(a) who is a First Nation child,

(b) who is a Nisg̱a'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;

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INDIGENOUS CHILD – CURRENT LEGISLATION

"Indigenous authority" (CFCSA)

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

"Indigenous governing body" (Declaration Act)

means 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*;

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ROLE OF THE SUPREME COURT OF B.C.

What is the problem?

The Provincial Court of B.C. has the authority to hear cases under Indigenous child and family service laws, if an IGB chooses.

However, if an IGB or any other party disagrees with the BC Provincial Court, there is no appellate court that can hear cases under Indigenous law.

What needs to change?

Some IGBs at coordination agreement tables have identified a desire to use the Supreme Court of B.C. as an appellate court if needed and if the IGB chooses to do so.

Areas for Input

What amendments need to be made to create the appropriate authority for the Supreme Court of B.C. to act as an appellate court?

This would be a NEW section of legislation.

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DISPENSING WITH NOTICE

What is the problem?

Bill 38 introduced provisions that enable a Director to withdraw when Indigenous jurisdiction applies to a child.

BC Courts have the authority to dispense with notice to any party in a court proceeding. However, the current section is not broad enough to apply to cases where a Director withdraws when Indigenous jurisdiction applies.

What needs to change?

BC Courts need authority to dispense with notice in cases where a Director withdraws when Indigenous jurisdiction applies.

Areas for Input

What amendments need to be developed to align with existing court processes, and meet the needs of Indigenous Governing Bodies exercising jurisdiction?

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DISPENSING WITH NOTICE – CURRENT LEGISLATION

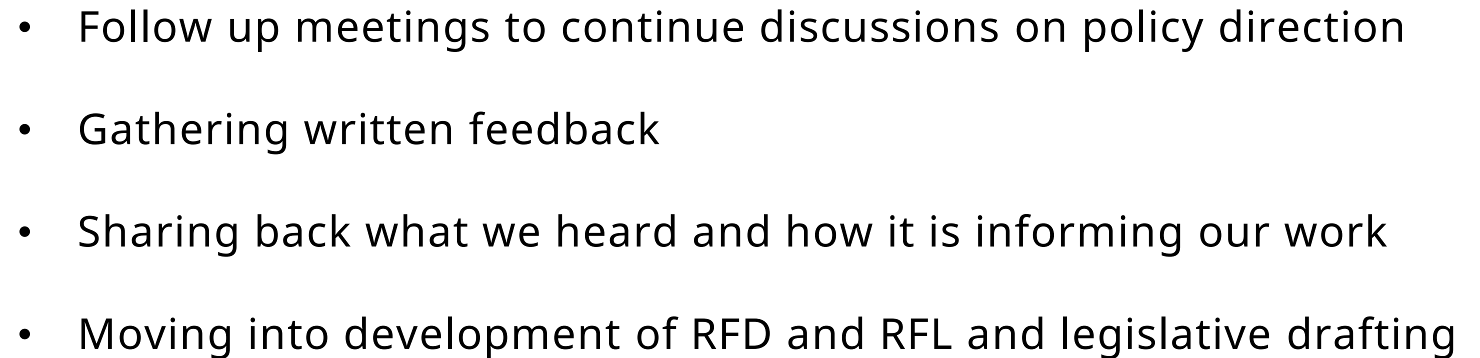
Power to vary notice requirements and to make orders without notice

69 (1) The Supreme Court or the Provincial Court may

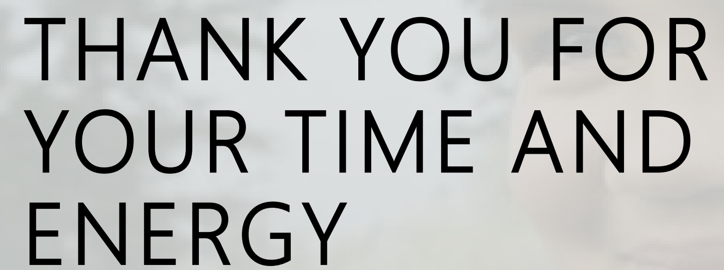
(a) shorten the time period for serving a notice under this Act or extend the period even though it has expired, or

(b) dispense with a requirement that notice of a proceeding or of all proceedings in relation to a child be served on a party or other person.

NEXT STEPS



- Follow up meetings to continue discussions on policy direction
- Gathering written feedback
- Sharing back what we heard and how it is informing our work
- Moving into development of RFD and RFL and legislative drafting



THANK YOU FOR YOUR TIME AND ENERGY

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