

## Proposed Regulation Change for Co-Development

### Adoption Regulation

### Child, Family and Community Service Regulation

February 23, 2023

## Bill 38 Regulations Overview

### Change Description

We are eager to develop the remaining provisions of Bill 38, the *Indigenous Self Government in Child and Family Services Amendment Act* through a series of regulations in consultation and cooperation with Indigenous Peoples and partners. We respectfully invite partnership with us in co-developing regulations to the *Adoption Act* and *Child, Family and Community Service Act* (CFCSA) to support implementation of the remaining provisions.

We anticipate preparing regulations on the following topics:

#### 1. Court Rules/Schedule 3 Forms

Summary:	Bill 38 provides for the director's withdrawal from CFCSA court proceedings and cancellation of a continuing custody order based on an Indigenous authority's request (sections 33.02 – 33.06; sections 48.1 – 48.6) and the transition to an Indigenous authority providing services or having custody of a child under an Indigenous law (sections 50.02 – 50.05). To enable the director's withdrawal and cancellation of continuing custody orders due to Indigenous law, the Ministry must amend the reports the director is required to provide to the provincial court ( <b>Schedule 3 of the Child, Family and Community Service Regulation</b> ).
Illustrative Policy Questions:	<ol style="list-style-type: none"><li>1. What new forms or amendments to existing Schedule 3 forms are needed to support the director's withdrawal or cancellation of continuing custody order?</li><li>2. What new regulations will be required to support this process?</li></ol>
Contact	If you are interested in learning more or participating, contact <a href="mailto:renae.snell@gov.bc.ca">renae.snell@gov.bc.ca</a> .

#### 2. Terminology/Alignment

Summary:	Bill 38 amends terminology in the <i>Adoption Act</i> and CFCSA, in part to align them to the federal <i>An Act respecting First Nations, Inuit and Métis children, youth and families</i> and the <i>United Nations Declaration on the Rights of Indigenous Peoples</i> . The regulations under these statutes should be amended to reflect the new terminology.  In addition, other consequential changes to the regulations may be needed to align the content of the regulations with the content of the legislation.
Illustrative Policy Questions:	<ol style="list-style-type: none"><li>1. Should the reference to "understanding and views" in <b>section 4 of the Adoption Regulation</b> be replaced with "views and preferences" to align with the new <b>section 3 (1) (g) of the Adoption Act</b>?</li></ol>

	2. Should <b>section 10 (Information to be provided to clients by adoption agencies) of the Adoption Agency Regulation</b> include a requirement that the adoption agency inform parents of the obligation to consult and cooperate with an Indigenous community before placing an Indigenous child for adoption?
Contact	If you are interested in learning more or participating, contact <a href="mailto:renae.snell@gov.bc.ca">renae.snell@gov.bc.ca</a> .

### 3. Electronic Records Access

Summary:	Bill 38 provides for enhanced information sharing with Indigenous authorities to enable the planning for and exercise of jurisdiction over child and family services. The new section 79.3 of the CFCSA (not yet in force) recognizes that providing Indigenous authorities with access to the provincial government’s electronic systems is essential to ensure seamless systems in a multijurisdictional model. Regulatory amendments may be required to support agreements made under s.79.3 for access to electronic systems and requirements for access to the system used.
Illustrative Policy Questions:	<ol style="list-style-type: none"> <li>1. Which types of information and systems will the Indigenous authority have or not have access to? Why?</li> <li>2. What is meant by “access”?</li> </ol>
Contact	If you are interested in learning more or participating, contact <a href="mailto:renae.snell@gov.bc.ca">renae.snell@gov.bc.ca</a> .

### 4. Adoption Act Consents

Summary:	<p>Bill 38 amends the <i>Adoption Act</i> to require the consent of an Indigenous Governing Body (IGB) for the adoption of an Indigenous child that is in the custody of the director or where the director is the child’s personal guardian and where an Indigenous child has been placed for adoption by an extra provincial agency. The consent must be provided in a form prescribed by regulation.</p> <p>Bill 38 also requires that IGB consent be obtained before a CFCSA director requests the director of adoption to place an Indigenous child if the child is in the custody of the director or the director is the child’s personal guardian. CFCSA does not require that a form for consent be prescribed.</p>
Illustrative Policy Questions:	<ol style="list-style-type: none"> <li>1. By whom and for what purposes will the consent form be used?</li> <li>2. Should a form for IGB consent under the CFCSA be prescribed? Could the same form be used for the consent under the <i>Adoption Act</i> and the request under the CFCSA?</li> </ol>
Contact	If you are interested in learning more or participating, contact <a href="mailto:renae.snell@gov.bc.ca">renae.snell@gov.bc.ca</a> .

## 5. Public Guardian and Trustee

Summary:	The Public Guardian and Trustee is the property guardian for all children in the continuing custody of the director. Section 51.1 (Role of Public Guardian and Trustee – Indigenous authority) of Bill 38 provides for the Public Guardian and Trustee to continue to be an Indigenous child's property guardian by agreement with an Indigenous authority, once the child has moved to their Indigenous authority's care. This work will explore all matters relating to agreements between Indigenous authorities and the Public Guardian and Trustee for the continuation or termination of the Public Guardian and Trustee's property guardianship.
Illustrative Policy Questions:	<ol style="list-style-type: none"><li>1. What will need to be set out in regulation to support these agreements?</li><li>2. If agreements are not prescribed in the regulation but instead negotiated individually with the Public Guardian and Trustee and the Indigenous authority, are there any drawbacks to this approach? What would the benefits of this approach be?</li></ol>
Contact	If you are interested in learning more or participating, contact <a href="mailto:renae.snell@gov.bc.ca">renae.snell@gov.bc.ca</a> .

## 6. Indigenous Child Welfare Director

Summary:	<p>Bill-38 provides for the creation of an Indigenous Child Welfare Director. This role is intended to support and guide the seamless operation of the CFCSA and Indigenous exercise of jurisdiction.</p> <p>Section 91.2 (not yet in force) sets out that the minister may designate a person to be the Indigenous Child Welfare Director and that this designation must be made in consultation and cooperation with Indigenous Peoples in British Columbia whose rights or interests may be affected by the designation.</p> <p>Regulation making authority under <b>section 103 of the CFCSA</b> with respect to the powers, duties and functions of the Provincial Director of Child Welfare (a position separate from the Indigenous Child Welfare Director) creates space to develop the role further in collaboration with Indigenous partners. It may be necessary to describe the administrative aspects of the role in regulations.</p>
Illustrative Policy Questions:	<ol style="list-style-type: none"><li>1. What powers, duties and functions should be prescribed? Why?</li></ol>
Contact	If you are interested in learning more or participating, contact <a href="mailto:wendy.norris@gov.bc.ca">wendy.norris@gov.bc.ca</a> .