

# Policy 1.2 Upholding Indigenous Jurisdiction over Child and Family Services

MCFD Core Policy	Child Safety, Family Support & Children in Care Services
Effective Date	November 25, 2022
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## A: Policy

This policy outlines the steps a director is required to take in meeting their duties related to upholding Indigenous jurisdiction over child and family services for Indigenous children and youth. This policy applies only when an Indigenous law applies to a child/youth, regardless of whether an Indigenous authority is providing services under that law. If there is a conflict or inconsistency between this policy and any other child welfare policy, or practice guideline, follow this policy.

A director has an obligation to promptly take all reasonable steps to confirm whether a coordination agreement and/or Indigenous law and/or s.92.1 community agreement applies to an Indigenous child/youth and should promptly contact the relevant Indigenous authority, if applicable, to determine whether it wishes to provide Indigenous child and family services to the child/youth.

An Indigenous community might exercise jurisdiction over one or more areas of Indigenous child and family services. If a community has a law that applies to a child/youth who is involved with the director under the *Child, Family and Community Service Act* (CFCSA), even if services are not going to be provided under the Indigenous law, this policy applies. For confirmation of whether a coordination agreement, and/or Indigenous law and/or s.92.1 community agreement applies and for guidance on working with Indigenous children, youth, families and communities when an Indigenous law does not apply, see [Policy 1.1 - Working with Indigenous Children, Youth, Families and Communities](#).

An Indigenous governing body representing a child/youth's community may enter into a coordination agreement under the CFCSA or an agreement outlining how a director is to act in a manner consistent with the community's Indigenous law. When there is a coordination agreement or other agreement in place under the CFCSA, a director must adhere to it. If there is a conflict or inconsistency between any policy (including this policy) and an agreement, the agreement prevails to the extent of the conflict or inconsistency.

For certainty, no action described in this policy is intended to override agreed upon actions in a coordination agreement or s. 92.1 community agreement. Ensure relevant coordination agreements and s.92.1 community agreements are followed when working with Indigenous children and youth.

### Note:

- For readability, this policy uses the singular "community", "Indigenous authority" and "Indigenous law" throughout. Unless otherwise specified, these terms refer respectively

to all Indigenous communities to which a child/youth belongs and all applicable Indigenous authorities and Indigenous laws.

## **1. Director's Responsibilities When a Coordination Agreement and/or Indigenous Law Applies to a Child/Youth**

- (a) Upon confirming, under Policy 1.1, that a coordination agreement and/or Indigenous law applies to a child/youth, confirm with the applicable Indigenous authority whether it is, or will be, providing Indigenous child and family services to the child/youth.
  - (i) When multiple Indigenous laws may apply to a child/youth, see "Director's Responsibilities When Multiple Indigenous Laws May Apply to a Child/Youth".
- (b) If an Indigenous authority confirms that it is, or will be, providing Indigenous child and family services in accordance with an Indigenous law, follow the policies listed below, based on the child/youth's legal status under the CFCSA, as follows:
  - (i) If a protection report has been received respecting the child/youth and a protection response has not been started, see:
    - "Referring Child Protection Reports to an Indigenous Authority when Protection Response not Initiated"
    - "Role of the Director in Emergency Situations when Indigenous Law Applies"
  - (ii) If a protection response is underway, see:
    - "Referring Child Protection Reports to an Indigenous Authority During a Protection Response"
    - "Role of the Director in Emergency Situations when Indigenous Law Applies"
  - (iii) If the child/youth is receiving protection or guardianship services under the CFCSA, see "Withdrawing from a CFCSA Proceeding"
  - (iv) If the child/youth is receiving, or requesting, voluntary services under the CFCSA, see "Voluntary Services Offered Under the CFCSA"
- (c) If the Indigenous authority confirms it intends to have custody, under an Indigenous law, of an Indigenous child/youth who is in the continuing custody of the director, see "Cancellation of a Continuing Custody Order".
- (d) If the child/youth's Indigenous governing body has entered into a coordination agreement under section 90.1(1)(a) of the CFCSA, act in accordance with that agreement when following all policy standards listed in this policy.
- (e) Provide CFCSA services in a manner consistent with the applicable coordination agreement and/or Indigenous law and/or s. 92.1 community agreement, following Policy 1.1 and any other relevant ministry policies, procedures and practice directives, if the Indigenous authority:
  - (i) does not confirm that it intends to provide Indigenous child and family services to the child/youth, or
  - (ii) confirms that it is, or will be, providing Indigenous child and family services to the child/youth alongside CFCSA services being provided by the director.
- (f) Unless the child/youth's Indigenous community has entered into an agreement that provides otherwise, the Indigenous law cannot:
  - (i) impose new duties or restrictions on the director, beyond those imposed by the CFCSA or the federal Act, nor
  - (ii) require the director to provide, or to refrain from providing, specific services.

- (g) When providing services in a manner consistent with an Indigenous law, do not do anything that would be contrary to the CFCSA, *An Act respecting First Nations, Inuit and Métis children, youth and families* (the federal Act) section 10-15, the Canadian Charter of Rights and Freedoms, or any other law that applies to a director.
  - (i) Consult with a designated director, or other person assigned this responsibility by the designated director, in determining that it is not possible to act in a manner consistent with an Indigenous law or agreement, as described above. If the designated director, or other person assigned this responsibility by the designated director, agrees with this determination, legal advice should be obtained to confirm it as soon as possible.
  - (ii) If it is not possible to act in a manner consistent with the Indigenous law or agreement, for the reason described above, inform the Indigenous authority. If requested by the Indigenous authority, the designated director, or other person assigned this responsibility by the designated director, must provide a written rationale for the decision.

## **2. Director's Responsibilities when Multiple Indigenous Laws May Apply to a Child/Youth**

- (a) When multiple Indigenous laws apply to a child/youth, as early as possible encourage the applicable Indigenous authorities and/or Indigenous communities to collaborate on a plan for the child/youth, including, which Indigenous authority will be responsible for providing child and family services under their Indigenous law.
  - (i) See, "Director's Responsibilities when Multiple Indigenous Laws May Apply to a Child/Youth" in Procedures Section.
- (b) If there is uncertainty or dispute about whether an Indigenous law applies to a child/youth, continue to exercise powers and perform duties in accordance with the CFCSA and consult and cooperate with Indigenous authorities and/or Indigenous communities, following all relevant ministry policies, procedures and practice directives, and ensuring the dispute does not disrupt services to the child/youth and family.
  - (i) If a dispute is unable to be resolved while carrying out CFCSA services, all persons may agree to mediation or other alternative dispute resolution mechanisms as a means to support resolving the dispute in a timely and objective manner as per section 22(2) of the CFCSA.
- (c) If more than one Indigenous law applies to the child/youth and there is a dispute over which Indigenous authority will provide child and family services to the child/youth, continue to consult and cooperate with Indigenous authorities and/or Indigenous communities to provide services under the CFCSA, acting in a manner consistent with each Indigenous law, while supporting the dispute to be resolved in a timely and objective manner.
- (d) When an Indigenous authority provides written confirmation that it is, or will be, providing Indigenous child and family services or intends to have custody of a child in the continuing custody of the director, and another Indigenous authority has made an application for an order respecting Indigenous law, encourage the use of alternative dispute resolution wherever possible to support resolving the dispute in a timely and objective manner and see "Withdrawing from the CFCSA Proceeding" and "Cancellation of a Continuing Custody Order".
- (e) If more than one Indigenous law applies to the child/youth and all relevant Indigenous authorities agree in writing that one Indigenous authority will be responsible for providing Indigenous child and family services to the child/youth, follow the applicable policies below, based on the child/youth's legal status under the CFCSA, so that responsibility can shift to the Indigenous authority.

### **3. Information Sharing**

- (a) Information must be shared with an Indigenous authority to support its provision of Indigenous child and family services. See [Appendix I – Information Sharing for details](#).

### **4. Role of the Director in Emergency Situations When Indigenous Law Applies**

- (a) Where there is reason to believe an Indigenous child/youth's immediate health or safety is at risk, attempt to contact the Indigenous authority if possible, giving consideration to the immediacy and severity of the circumstances. If the Indigenous authority cannot be reached or confirm that it will assess the information in the report within a timeframe appropriate to the circumstances, take the necessary steps to address the child/youth's immediate health or safety needs. See Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#) for procedures to follow.
  - (i) Where there is reason to believe that an Indigenous child/youth-in-care is missing, see Policy 5.12 in [Chapter 5 – Child and Youth in Care Policies](#).
- (b) As soon as the child/youth's immediate health or safety is no longer at risk, contact the Indigenous authority to confirm whether it will receive the protection report and if applicable, refer the report to the Indigenous authority as outlined in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#).

### **5. Reporting a Child Protection Concern to an Indigenous Authority**

- (a) If a coordination agreement and/or Indigenous law and/or s. 92.1 community agreement applies to an Indigenous child/youth and a director has reason to believe the child/youth is in need of protection based on their own observations while carrying out CFCSA responsibilities (e.g., providing section 5 voluntary services), follow any duty to report requirements in the coordination agreement and/or Indigenous law and/or s. 92.1 community agreement that applies to the child/youth and under any agreement with the child/youth's community, if applicable.
- (b) If the Indigenous authority confirms it will assess the information in the report and the director shares all relevant information with the Indigenous authority, no report under CFCSA section 14 is required. If the Indigenous authority does not confirm it will assess the information in the report, the protection concern must be reported to a director authorized to receive a report under CFCSA section 14.

### **6. Referring Child Protection Reports to an Indigenous Authority when Protection Response is not Initiated**

- (a) Upon receiving a child protection report regarding a child/youth to whom Indigenous law applies, promptly contact the Indigenous authority responsible for providing Indigenous child and family services under the law.
- (b) If the Indigenous authority confirms verbally or in writing that the Indigenous law applies to the child/youth and that it will assess the report, promptly refer the report, following the steps outlined in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#). All information collected as part of the report, including the name and contact information of the reporter, can be shared with the Indigenous authority. See [Appendix I](#) for more information sharing details.

### **7. Referring Child Protection Reports to an Indigenous Authority During a Protection Response**

- (a) If information is received that indicates a coordination agreement and/or Indigenous law and/or s. 92.1 community agreement applies to a child/youth while a protection response is underway, promptly contact the Indigenous authority responsible for providing Indigenous child and family services. A child protection response includes a Family Development Response or Investigation, as described in [Chapter 3 – Child Protection Response Policies](#).

- (b) If the Indigenous authority confirms verbally or in writing that the Indigenous law applies to the child/youth and it will assess the information in the report, promptly complete the required steps outlined in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#).
- (c) If the Indigenous authority does not confirm it will assess the information in the report or requests the director to continue providing child protection services under the CFCSA, follow [Policy 1.1 - Working with Indigenous Children, Youth, Families and Communities](#) and [Chapter 3 – Child Protection Response Policies](#).

## **8. Ending Supervision Orders and Temporary Custody Orders When There is No CFCSA Proceeding Underway**

- (a) When an Indigenous authority provides written confirmation that it is, or will be, providing Indigenous child and family services and there are no ongoing court proceedings to withdraw from, follow the steps outlined in the [Practice Directive for Ending Protection or Guardianship Services](#).

## **9. Withdrawing from a CFCSA Proceeding**

- (a) When an Indigenous authority provides written confirmation that it is, or will be, providing Indigenous child and family services and requests the director to withdraw from a CFCSA proceeding, check [this Repository](#) to confirm there is an applicable coordination agreement and/or s. 92.1 community agreement and promptly follow the policies below, based on the stage of the CFCSA proceeding:
  - (i) Before a presentation hearing, or before the conclusion of a presentation hearing relating to the removal of a child, follow the steps in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#).
  - (ii) After a presentation hearing relating to supervision of a child, follow the steps in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#).
  - (iii) After a presentation hearing relating to the interim or temporary custody of a child, follow Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#).
- (b) Follow the procedures in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#) and Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#) in providing notice of the withdrawal and how to proceed if an application is made for an order respecting Indigenous law.
- (c) If there are multiple Indigenous laws that may apply to the child/youth and there is dispute as to which Indigenous authority will be responsible for providing Indigenous child and family services to the child/youth, gather the circle and encourage the use of alternative dispute resolution wherever possible to support resolving the dispute in a timely and objective manner.
  - (i) See “Director’s Responsibilities When Multiple Indigenous Laws May Apply to the Child/Youth”
- (d) If a person notified of the withdrawal makes an application for an order respecting Indigenous law, follow [Policy 3.10 in Chapter 3 – Child Protection Response Policies](#) and Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#).
- (e) In rare circumstances, the director may make an application for an order respecting Indigenous law if approved by the Provincial Child Welfare Director. If possible, the director should attempt to meet with the Indigenous authority and come to an agreement that addresses the director’s concerns prior to making an application.
- (f) If the court makes an order (including a consent order signed prior to the commencement of a hearing) that the Indigenous law applies, withdraw as outlined in [Policy 3.10 of Chapter 3 - Child Protection Response Policies](#) and Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#).



- (g) If the court makes an order (including a consent order signed prior to the commencement of a hearing) that the Indigenous law does not apply and CFCSA proceedings continue, follow Policy 1.1 if no other Indigenous laws apply and proceed with the steps outlined in [Policy 3.10 of Chapter 3 - Child Protection Response Policies](#), [Chapter 4 – Out of Care Policies](#) or [Chapter 5 – Child and Youth in Care Policies](#), as applicable.
- (h) If no application is made for an order respecting Indigenous law, an application was made, but did not proceed, or if the court orders that the Indigenous law applies, notify the Indigenous authority of this in writing and request written confirmation of the date and time it will provide or continue to provide Indigenous child and family services for the child/youth. Any interim order, supervision order, temporary custody order or order under CFCSA section 97(5) respecting the child/youth ends on this date/time.
- (i) After the date and time confirmed by the Indigenous authority and services have been transitioned to the Indigenous authority, the director must present a Report to Court. See Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#) and Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#) for more information on withdrawing from a CFCSA proceeding.
- (j) When withdrawing, refer to [Chapter 4 – Out of Care Policy](#) for information on how to transition plan for children/youth in all out-of-care placements and Policy 5.1(b) in [Chapter 5 – Child and Youth in Care Policies](#) for how to transition plan for all children/youth in in-care placements.

## **10. Family Law Act (FLA) Matters**

- (a) When an Indigenous authority provides written confirmation that it is, or will be, providing Indigenous child and family services or intends to have custody of a child/youth, ensure the Indigenous authority is aware of any FLA proceeding regarding the child/youth that are in progress. See Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#).
- (b) If a non-custodial parent or another person's guardianship application under the FLA is planned to be heard together with a CFCSA proceeding, follow the process for withdrawals in relation to FLA matters outlined in Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#). If there is a CFCSA interim order or temporary custody order to a person other than the director, refer to [Chapter 4 – Out of Care Policy](#) for additional information.

## **11. Cancellation of a Continuing Custody Order**

- (a) When an Indigenous authority provides written confirmation that it intends to have custody, under Indigenous law, of a child/youth who is in the continuing custody of the director, follow Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#).
- (b) Follow the procedures in Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#) in providing notice of the Indigenous authority's intent to have custody, and how to proceed if an application is made for an order respecting Indigenous law.
- (c) If there are multiple Indigenous laws that may apply to the child/youth and there is dispute as to which Indigenous authority will have custody of the child/youth, gather the circle and encourage the use of alternative dispute resolution, including methods of traditional decision-making, wherever possible to support resolving disputes in a timely and objective manner.
- (d) If a person notified of the Indigenous authority's intention to have custody makes an application for an order respecting Indigenous law, follow Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#).
- (e) In rare circumstances, the director may make an application for an order respecting Indigenous law if approved by the Provincial Child Welfare Director. If possible, the

director should attempt to meet with the Indigenous authority and come to an agreement that addresses the director's concerns prior to making an application.

- (f) If the court makes an order (including a consent order signed prior to the commencement of a hearing) that Indigenous law applies, end the CFCSA care arrangement as outlined in Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#).
- (g) If the court makes an order (including a consent order) that the Indigenous law does not apply, the continuing custody order remains in place. Follow [Policy 1.1 – Working with Indigenous Children, Youth, Families and Communities](#) if there are no other applicable Indigenous laws and proceed with the steps outlined in [Chapter 5 – Children and Youth in Care Policies](#).
- (h) If no application is made for an order respecting Indigenous law, an application was made, but did not proceed, or if the court orders that the Indigenous law applies, notify the Indigenous authority of this in writing and request written confirmation of the date and time it will have custody of the child/youth. The continuing custody order ends on this date/time.
- (i) After the date/time confirmed by the Indigenous authority and the CCO ends, the director must present a Report to Court. See Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#) for more details on cancellation of a continuing custody order.

## **12. Voluntary Services offered under the CFCSA**

- (a) When services are requested under one of the CFCSA sections listed below, determine whether there is an Indigenous authority that provides services under an applicable coordination agreement and/or Indigenous law and/or s. 92.1 community agreement. If there is an Indigenous authority, inform the requesting parent, care provider, or youth (as the case may be) that voluntary services might be available from an Indigenous authority and support them to connect with the Indigenous authority.
  - (i) Section 5 (Services or Supports for Families)
  - (ii) Section 6 (Voluntary Care Agreement)
  - (iii) Section 7 (Special Needs Agreement)
  - (iv) Section 8 (Extended Family Program Agreement)
  - (v) Section 12.1 (Support Services for Youth)
  - (vi) Section 12.2 (Agreements with Youth)
- (b) Inform the Indigenous authority that voluntary CFCSA services will be provided, prior to entering into an agreement with a parent, care provider or youth under a CFCSA section listed above, in order to support coordinated service delivery as well as consultation and cooperation with Indigenous peoples in service planning and delivery for their children (CFCSA section 3(b)).
- (c) Inform the parent, care provider or youth who is entering into the agreement that information may be shared with the Indigenous authority prior to, and while, providing services (see Appendix I in this policy for more information). Comply with the following policies, as applicable:
  - (i) [Chapter 2 – Family Support Services and Agreements](#) for CFCSA section 5, 6, or 7 agreements
  - (ii) [Chapter 4 – Out of Care Policy](#) for CFCSA section 8 agreements
  - (iii) [Standards for Youth Support Services and Youth Agreements](#) for CFCSA section 12.1 or 12.2 agreements

- (d) If services are being provided under CFCSA section 5, 6, 7, 8, 12.1 or 12.2 and an Indigenous authority notifies the director that it is, or will be, providing Indigenous child and family services, promptly notify the parent, care provider or youth with whom the CFCSA agreement was made. Determine with the parent, care provider or youth, and the Indigenous authority, whether the CFCSA agreement should continue. See Policy 2.3 and 2.4 in [Chapter 2 – Family Support Services and Agreements](#).
- (e) A CFCSA voluntary agreement can be entered into, or continued, when an Indigenous law applies to the child/youth, including where an Indigenous authority is providing services to the child/youth. Services should be coordinated with those provided by the Indigenous authority, if applicable, and information must be shared in accordance with Appendix I of this policy.
  - (i) CFCSA section 6 or 7 agreements can continue if any services provided concurrently by the Indigenous authority would not conflict with the director’s care role under the section 6 or 7 agreement.

## B: Procedures

1. [Director’s Responsibilities Respecting Indigenous Children and Youth](#)
2. [Director’s Responsibilities When Multiple Laws May Apply to a Child/Youth](#)
3. [Withdrawing From a CFCSA Proceeding](#)
4. [Cancellation of a Continuing Custody Order](#)
5. [Voluntary Services Offered Under the CFCSA](#)

## C: Policy Visuals

The table below shows where **Bill 38** court rules and regulations changes have been updated in policy.

**Summary of Bill 38 Court Rules and Regulation Changes Updated in Existing Policy**

	s. 33 Withdrawal	s. 48 Withdrawal	s. 50 Ending CCOs	Transition to Indigenous Authority
Policy 1.1	✓	✓	✓	
Policy 1.2	✓	✓	✓	✓
Chapter 2 Family Support Services and Agreements				✓
Chapter 3 Child Protection	✓	✓		✓
Chapter 4 Out of Care/Kinship Placements				✓
Chapter 5 Children & Youth in Care		✓	✓	✓



Chapter 6 Permanency		✓	✓	✓
Standards for Youth Support Service and Youth Agreements	✓	✓	✓	✓
Chapter 8 Resource Work	✓	✓	✓	✓
Contracted Agencies	✓	✓	✓	✓

## D: Procedures | Detailed

### 1. Director's Responsibilities Respecting Indigenous Children and Youth

- (a) Check [this Repository](#) for any coordination agreement entered into by the Indigenous governing body representing the child/youth's community. If there is such an agreement, check whether it includes contact information for the relevant Indigenous authority and use that contact information for the following procedure.
- (b) Contact the Indigenous authority, if applicable, to confirm whether it is, or will be, providing Indigenous child and family services to the child/youth. This can be done by telephone, email, or other means, and should be done in the promptest manner possible (particularly if there is reason to believe that there is an immediate risk to the child/youth's health or safety).
- (c) If the Indigenous authority does not confirm that it is, or will provide, Indigenous child and family services to the child/youth, or there is no applicable Indigenous authority, confirm on [this Repository](#) whether the Indigenous community has entered into an agreement under the CFCSA that affects the director's delivery of services under the CFCSA.
  - (i) If no agreement outlines how the director is to act in a manner consistent with the community's Indigenous law, the Indigenous law might, for example, provide guidance respecting the prioritization of culturally based alternative dispute resolution processes, wherever possible.
  - (ii) Contact the Indigenous authority for further guidance regarding acting consistent with the Indigenous law, as needed.
  - (iii) In the case where there is an applicable Indigenous authority and it does not confirm that it is, or will, provide Indigenous child and family services to the child/youth, inform the designated director, or other persons assigned this responsibility by the designated director.
- (d) If providing services under the CFCSA, act consistently with the Indigenous law. This involves actively referring to the Indigenous law to assist in determining how CFCSA services should be delivered to the child/youth, for example:
  - (i) following principles outlined in the Indigenous law, and
  - (ii) following guidance in the Indigenous law respecting matters such as:
    - ways of identifying the child/youth's family members, based on a description or definition of "family" which might appear in the Indigenous law,
    - way to uphold the child/youth's inherent rights to culture and continuously incorporate into the child/youth's care plan,

- prioritizing the child/youth attending cultural ceremonies,
  - conduct the placement of the child/youth in alignment with Indigenous law wherever possible,
  - the prioritization of culturally based alternative dispute resolution processes, and
  - definitions of terms such as “permanency”.
- (e) If services are being provided under the CFCSA and it is not possible to act in a manner consistent with the applicable Indigenous law, because doing so would be contrary to another law that applies to a director:
- (i) consult with a designated director, or other person assigned this responsibility by the designated director, in making this determination. If the designated director, or other person assigned this responsibility by the designated director agrees, obtain legal advice from Legal Services Branch as soon as possible, to confirm the determination,
  - (ii) inform the Indigenous authority that the director cannot act consistently with the Indigenous law in the given circumstance and provide the reasons for this (can be provided verbally but must be provided in writing if that is requested by the Indigenous authority), and
  - (iii) document the rationale and the approval of the designated director, or other person assigned this responsibility by the designated director.

## **2. Director’s Responsibilities When Multiple Laws May Apply to a Child/Youth**

- (a) If there are multiple Indigenous laws that may apply to the child/youth, gather the circle as early as possible for the Indigenous governing bodies, Indigenous authorities and/or Indigenous communities to discuss planning and problem solving for the child/youth prior to an Indigenous authority providing written confirmation that it is or will be providing Indigenous child and family services or intends to have custody under Indigenous law.
- (b) If there are multiple Indigenous laws that may apply to the child/youth and there is dispute as to which Indigenous authority will be responsible for providing Indigenous child and family services or have custody of the child/youth, the Indigenous authorities should decide amongst themselves which Indigenous authority will be responsible for providing child and family services or have custody. The director should:
- (i) encourage the use of collaboration, traditional decision-making processes or alternative dispute resolution wherever possible and inform the circle that if a dispute cannot be resolved outside of court, it may result in an Indigenous Law Order hearing;
  - (ii) continue to consult and cooperate with Indigenous authorities and/or Indigenous communities to support resolving disputes in a timely and objective manner; and
  - (iii) do not provide legal advice.

## **3. Withdrawing from a CFCSA Proceeding**

- (a) See Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#) for procedures related to:
- (i) when an Indigenous authority provides written confirmation that it is or will be providing Indigenous child and family services to a child/youth and requests that the director withdraw from CFCSA proceedings before the conclusion of a presentation hearing or after a presentation hearing for a supervision order, and
  - (ii) when a person notified of the director’s intention to withdraw makes an application for an order respecting Indigenous law.

- (b) See Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#) for procedures related to:
  - (i) when an Indigenous authority provides written confirmation that it is or will be providing Indigenous child and family services to a child/youth in care under an interim or temporary order and requests that the director withdraw from CFCSA proceedings after the presentation hearing, and
  - (ii) when a person notified of the director’s intention to withdraw makes an application for an order respecting Indigenous law.

#### 4. Cancellation of a Continuing Custody Order

- (a) See Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#) for procedures related to:
  - (i) when an Indigenous authority provides written confirmation that it intends to have custody, under Indigenous law, of a child/youth under a continuing custody order, and
  - (ii) when a person notified of an Indigenous authority’s intention to have custody of a child/youth under a continuing custody order makes an application for an order respecting Indigenous law.

#### 5. Voluntary Services Offered under the CFCSA

- (a) See the following, as applicable, when CFCSA voluntary services are requested or are being provided and an Indigenous law applies to the child/youth:
  - (i) [Chapter 2 – Family Support Services and Agreements](#) for CFCSA section 5, 6, or 7 services
  - (ii) [Chapter 4 – Out of Care Policy](#) for CFCSA section 8 services
  - (iii) [Standards for Youth Support Services and Youth Agreements](#) for CFCSA s. 12.1 or 12.2 services

## E: Related Resources

Type of Resource	Resource
Policy	<a href="#">Policy 1.1</a>
Policy	<a href="#">Chapter 2</a>
Policy	<a href="#">Chapter 3</a>
Policy	<a href="#">Chapter 4</a>
Policy	<a href="#">Chapter 5</a>
Policy	<a href="#">Standards for Youth Support Services and Youth Agreements</a>
Framework	<a href="#">Aboriginal Policy and Practice Framework</a>
Repository	<a href="#">Repository of Agreements</a>

Legislation	<a href="#">An Act respecting First Nations, Inuit and Métis children, youth and families</a>
Legislation	<a href="#">Child, Family and Community Service Act</a>
Regulations	<a href="#">Child, Family and Community Service Regulations</a>
Rules	<a href="#">Provincial Court (Child, Family and Community Service Act) Rules</a>

## F: Table of Changes

Amendment Date	Cliff #	Section	Change Type	Notes
2023/03/17	277346	Procedures 'Director's responsibilities respecting Indigenous children and youth'	amended	Clarifies where to find Indigenous laws and how to initiate contact with an Indigenous authority.
2024/01/15	285316	All	amended	Changes approval level from supervisor to designated director, or other person assigned this responsibility by the designated director, when it is not possible to act consistently with an Indigenous law.  Adds policy to reflect Bill 38 amendments to the CFCS Regulation and Provincial Court (CFCSA) Rules to withdraw from CFCSA proceedings and end CCOs to uphold Indigenous law.
2024/04/18	N/A	Glossary Appendix G	new	Reflect Bill 5 CFCSA amendments to definition of Indigenous child.

## G: Glossary

Term	Definition
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Coordination Agreement	<p>The mechanism established under the federal Act for Canada, BC, and an Indigenous governing body to address coordination measures for the exercise of Indigenous jurisdiction over Indigenous child and family services. The Province may enter into a coordination agreement under section 90.1(1) of the CFCSA.</p> <p>The purpose of a coordination agreement is to harmonize service delivery to reduce the risks of gaps, confusion, and uncertainty. Note – a coordination agreement is not necessary for an Indigenous community to enact laws and provide Indigenous child and family services under those laws. If a coordination agreement exists for a community, the director must act in accordance with it when determining actions in relation to a child/youth to whom the Indigenous law applies.</p>
Indigenous authority	A body or entity, including an Indigenous governing body, that is authorized by an Indigenous governing body to provide Indigenous child and family services under Indigenous law.
Indigenous Governing Body	<p>An entity that is authorized to act on behalf of Indigenous peoples that hold rights recognized and affirmed by section 35 of the <i>Constitution Act, 1982</i></p> <p>Once it is clear which Indigenous governing body has been authorized to act on behalf of an Indigenous group, community or people, that information is added to a table of Indigenous governing bodies and the communities they represent. Legal advice should be obtained if there is uncertainty respecting whether an entity is an Indigenous governing body.</p>
Indigenous child	<p><b>“Indigenous child”</b> means a child</p> <p>(a) who is a First Nation child,</p> <p>(b) who is a Nisga'a child,</p> <p>(c) who is a Treaty First Nation child,</p> <p>(d) who is under 12 years of age and has a biological parent who</p> <p style="padding-left: 40px;">(i) is of Indigenous ancestry, including Métis and Inuit, and</p> <p style="padding-left: 40px;">(ii) considers themselves to be an Indigenous person,</p> <p>(e) who is 12 years of age or over, of Indigenous ancestry, including Métis and Inuit, and considers themselves to be an Indigenous person, or</p> <p>(f) who an Indigenous governing body or Indigenous authority confirms, by advising a director, is a child belonging to an Indigenous community;</p>
Indigenous child and family services	Services provided by an Indigenous authority to support Indigenous children and families, including prevention services, early intervention services and child protection services.
Indigenous Law	A law in relation to Indigenous child and family services that is made in respect of Indigenous children and families by an Indigenous governing body in accordance with the law-making authority of the Indigenous governing body.
Reasonable Efforts	<p>Prompt and continual efforts focused on confirming whether:</p> <ul style="list-style-type: none"> <li>• a child/youth is Indigenous,</li> </ul>



- an Indigenous law applies to a child/youth, and
- there is an Indigenous authority that is authorized by the applicable Indigenous governing body to provide Indigenous child and family services under the applicable Indigenous law.

This includes using all known resources and contacts as well as reaching out to individuals, agencies and organizations that might be able to provide helpful information.

## H: List of Acronyms

Acronym in Policy	Full Term
CFCSA	Child, Family and Community Service Act
CFCSR	Child, Family and Community Service Regulation
FLA	Family Law Act
IGB	Indigenous Governing Body
PCR	Provincial Court (Child, Family and Community Service Act) Rules

## I: Appendix – Information Sharing

Information in a *Child, Family and Community Service Act* (CFCSA) record must be shared with an Indigenous authority that requests it under s.79.2 of the CFCSA if the information is necessary for the provision of Indigenous child and family services to an Indigenous child/youth or family under an Indigenous law. However, there are formal processes for disclosure of this information that do not include the director. This appendix is intended to guide a director on what to do when a request for information is made to the local office, including how information can be shared and what cannot be shared.

- 1) If a request for information for an Indigenous child/youth is received by a local office, the director is expected to:
  - a) Confirm who is requesting the information, including whether it is originating from an Indigenous authority operating under coordination agreement and/or Indigenous law and/or s. 92.1 community agreement, an Indigenous governing body working toward introduction of a law, an Indigenous community with a s. 92.1 agreement or from an individual.
  - b) If the request is related to a child protection report received by an Indigenous authority provide information as requested to support assessment of the child protection report.
  - c) If the request is not related to a child protection report received by an Indigenous authority and if:
    - i) The request is originating from an Indigenous authority:
      - Refer the Indigenous authority to the Information Policy and Disclosure Branch for any full file disclosure requests.
      - Refer to Policy 3.10 in [Chapter 3 – Child Protection Response Policies](#) or Policy 5.1(b) in [Chapter 5 – Children and Youth in Care Policies](#) and consult with a

team leader on what information can be shared, if the request is related to transition planning.

- ii) The request is originating from an Indigenous governing body or Indigenous community with a s.92.1 agreement, share information in alignment with the s.92.1 agreement. A team leader should be consulted before releasing documents.
  - iii) The request is originating from and Indigenous governing body for the purposes of jurisdiction without a s. 92.1 agreement, refer the Indigenous governing body to the [Indigenous Partnerships and Agreements Team](#) to discuss.
  - iv) The request is originating from anyone else, refer the individual to the Citizens Services request for records process. Inform them that requests for personal information are typically restricted to the individual the information is on or their legal guardian.
- 2) Information from the CFCSA record cannot be shared if it is within one or more of the following categories (this is an exhaustive list of mandatory redactions):
- a) is subject to solicitor-client privilege,
  - b) is information obtained in a family conference, mediation, or other alternative dispute resolution that is prohibited from disclosure under section 24 of the CFCSA, or
  - c) is information from a youth justice record and its disclosure is not authorized under the *Youth Criminal Justice Act* (Canada).
- 3) When an Indigenous authority requests specific information from a CFCSA record, it can be shared verbally or in paper/electronic format, subject to the restrictions above. Verbal sharing might be preferable if the Indigenous authority has indicated it has a time-sensitive need for the information. Document all requests and responses in ICM case notes accordingly.
- 4) If an Indigenous authority requests broader information from the CFCSA file, contact Disclosure and Document Management at [MCF.DocumentManagement@gov.bc.ca](mailto:MCF.DocumentManagement@gov.bc.ca).

## J: Appendix – CFCSA Principles Relating to Jurisdiction

In addition to the CFCSA principles and those of the Federal Act, the following principles have been developed and included in the CFCSA amendments to assist and guide workers in the provision of services relating to Indigenous families and children where an Indigenous law applies. The principles support the requirements outlined in this policy for workers in upholding Indigenous jurisdiction over Indigenous child and family services.

### Self government principles

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

- a) Indigenous peoples have an inherent right of self-government, including self-determination, that is recognized and affirmed by section 35 of the [Constitution Act, 1982](#) and by the United Nations Declaration on the Rights of Indigenous Peoples;
- b) the inherent right of self-government includes jurisdiction in relation to Indigenous child and family services, law-making authority in relation to those services and authority to administer and enforce laws made under that law-making authority;
- c) Indigenous laws have the force of law in British Columbia.

### 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.
- (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;
  - (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 and objective manner and must give due consideration to the Indigenous laws, or the Indigenous customs, practices and traditions, of the Indigenous peoples or communities.

## K: Metadata

Description	This policy outlines the steps a director is required to take in their duties related to upholding Indigenous jurisdiction over child and family services for Indigenous children and youth. This policy applies only when an Indigenous law applies to a child/youth, regardless of whether an Indigenous authority is providing services under that law.
Keywords	Policy 1.2, Indigenous jurisdiction, Indigenous law, Indigenous authority, Indigenous governing body, Indigenous children and families, coordination agreement
Synonyms	Policy 1.2, upholding Indigenous jurisdiction