

Summary of Bill 26, Child, Family and Community Service Amendment Act, 2018

The following is a summary of the amendments being proposed to the *Child, Family and Community Service Act* as Bill 26 introduced on April 24, 2018.

Definitions (section 1(1))

The following changes to the definitions are being made:

- The definition of “**Indigenous child**” is being modified to be more inclusive by including first nation children and naming Métis and Inuit children.
- The definition of “**First Nation child**” is being added to have a subset of Indigenous children who are members or entitled to be members of a First Nation. The definition of “**Indian band**” is being replaced with the definition “**First Nation**” as “**Indian band**” is under-inclusive and does not include two First Nations in BC that have self-government agreement with Canada (Sechelt Indian Band and Westbank First Nation).
- A definition of “**First Nation**” is added that includes the ability to add more First Nations by prescribing them in regulation.
- The definition of “**First Nation land**” is being added so that the director can refer child protection reports to prescribed First Nations for their children who reside on their lands. The “**First Nation land**” definition provides the clarity that it is land over which the nation has law-making authority. Many First Nations assert title to their traditional territories, which are broader than reserves or the areas of land identified under the self-government agreements.
- The definition of “**designated representative**” is being modified to reflect the “**Indian band**” definition being replaced with the “**First Nation**” definition.

Guiding principles (section 2)

A new guiding principle is being added so that the interpretation of the Act will occur recognizing that Indigenous families and Indigenous communities share responsibility for the upbringing and well-being of Indigenous children.

An existing guiding principle is being modified so that the interpretation of the CFCSA will occur acknowledging that Indigenous children are entitled to learn about and practice their Indigenous traditions, customs and languages, and belong to their Indigenous communities.

Service delivery principles (section 3)

A new service delivery principle is being added so that the director must consider the impact of residential schools on Indigenous children, families and communities in the planning and delivery of services to Indigenous children and families.

Best interests of child (section 4)

The following element of the best interests test applied by Courts and the director is being modified so that if the child is an Indigenous child, an additional relevant factors must be considered in determining the child’s best interests: the importance of the child being able to learn about and practice the child’s Indigenous traditions, customs and language and the importance of the child belonging to the child’s Indigenous community.

Various voluntary agreements (sections 5, 6, 7, 8, 12.2)

Sections 5 – 8 allow the director to make agreements with parents, and those caring for a child. Amendments are being made so that Indigenous communities may have greater involvement in these various types of voluntary agreements and thereby participate in planning for their children. The director can make agreements with a parent who has custody of a child concerning services and support for families, voluntary care, special needs, agreements with a child's kin and others, and youth agreements with the appropriate legal entities representing Indigenous communities.

For all voluntary agreements, the amendments require that a party must have a description of the party's role in the agreement. For all the agreements, the parties listed may withdraw from the agreement, but the withdrawal does not have the effect of terminating the agreement.

Finding out if a child needs protection (section 16)

Section 16 sets out what the director must do with a child protection report. Currently the section requires the director to determine whether to refer the report to another director, which involves the referred director being assigned to the report to determine the most appropriate response to support the safety and well-being of a child. The referred director has a range of options, depending on the situation, including: offer support services, refer to a community agency for services, conduct an assessment or conduct a child protection investigation. The current legislation also requires the director to make all reasonable efforts to report the result of the assessment or investigation to the parent entitled to custody of the child, the person who reported the information, and any other person or community agency if the director determines this is necessary to ensure the child's safety or well-being.

If the amendments are approved, this section will still require the director to fulfill their existing obligations. However, if the report concerns an Indigenous child, the director will be required to determine whether to refer the report to a First Nation, the Nisga'a Nation or a Treaty First Nation in situations where the child resides on the nation's land. The referral of the report will be sent to the nation if the nation has entered into an agreement to take on this responsibility and has been prescribed by regulation of the Lieutenant Governor in Council. Where the referral is made sometime after the report is made, the nation will need to provide the director with written confirmation that they will act on the report, as this confirmation absolves the director from further action.

Returning the child before the presentation hearing

The time frame for the director to return the child to the parent apparently entitled to custody is being extended to any time up to the conclusion of a presentation hearing. Where the director does not take further steps, in the proceedings, the director must provide a report to the court. The requirement for the director to provide a report within 7 days is being changed to "promptly" to give the director more flexibility to respond at a time that corresponds to the court's schedule.

Withdrawal

The director will be enabled to withdraw from a hearing relating to the removal of a child if a parent makes an agreement with the Indigenous legal entity representing the child that the director considers is adequate to protect the child. The director is required to give their reasons for withdrawal to the court, the child's parent, and any person notified of the presentation hearing.

The amendments will also authorize the director, where the parent is not a resident of BC, to make an agreement with the government or agency of the relevant jurisdiction that the director considers adequate to protect the child or where the director makes an agreement under section 8 respecting the child.

Continuing Custody Order Matters – effect of (sections 50) and Planning for an Indigenous child after a continuing custody order (section 50.01)

Currently, section 50 requires the director to send a copy of the final custody order to the Public Guardian and Trustee. With the proposed amendments, the director would have to also send a copy of this order to the appropriate Indigenous entity for that child.

The director will be required to plan for an Indigenous child after a continuing custody order. If there is no agreement with an Indigenous entity, the director must make reasonable efforts to involve, at least on an annual basis, the appropriate Indigenous entity for that child.

Additional Notice of Orders and Entitlement to be a party

Parents and Indigenous communities are being added to receive notice concerning the hearing of all extensions of temporary custody orders, and all extensions of temporary custody orders if the permanent transfer of custody is planned – this is regardless of whether the parent or Indigenous community representative appeared at the earlier protection hearing.

Cancellation of continuing custody order: Indigenous communities will also receive notice when the director or a party applies to cancel a continuing custody order.

When notice of the hearing is received, the persons served will be entitled to be a party at the hearing and to notice of a hearing if they appear at the commencement of the hearing.

Rights of children in care (section 70)

Section 70 sets out the rights of children in care. A new right for Indigenous children is being added that will have to be considered in addition to the existing rights: the right to receive guidance, encouragement and support to learn about and practice their Indigenous traditions, customs and languages, and belong to their Indigenous communities.

Disclosure without consent (section 79)

The director is being given the authority to disclose information without consent if the disclosure is

- meant to help an Indigenous child learn and practice the child's Indigenous traditions, customs or language, or belong to their Indigenous community or
- being made to a First Nation, the Nisga'a Nation, a Treaty First Nation or another Indigenous community in accordance with an agreement made under the authorising section.

Director may make agreements respecting Indigenous children

A new section is being added that allows the director to make agreements with prescribed First Nations, the Nisga'a Nation, and Treaty First Nations respecting the referral of child protection reports concerning Indigenous children of the First Nation, Nisga'a Nation and Treaty First Nation.

This section also allows the director to make agreements for planning for children and services agreements with First Nations or a legal entity representing another Indigenous community, which may include assessments respecting Indigenous families, investigations respecting Indigenous children, the development of plans of care, the development of plans of Indigenous children needs who are in subject to a continuing custody order, the development of plans of independence, and placement decisions.

Other powers and duties of directors (section 93)

An amendment is being made to strengthen the authority of the director to enter into an agreement with Delegated Aboriginal Agencies and to distinguish between that kind of agreements and other agreements being permitted now with the amendments.

Power to make regulations (section 103)

Additional powers to make regulations are being made

- prescribing Indigenous entities for the purposes of the definition of “First Nation”
- prescribing First Nations, the Nisga’a Lisims Government or Treaty First Nations for the purposes of referring child protection reports prescribing additional purposes in respect of which a director may make an agreement under the new agreement section

Miscellaneous Modification

- The section that prohibits the disclosure of information (s.75) is being updated to include an agreement made under the new agreement section as another circumstance where a person must not disclose information obtained under the CFCSA except in accordance with that agreement.