



***Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu  
Shhw'a'luqwa'a' i' Smun'eem***

**[Laws of the Cowichan People for Families and Children]**



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**QUW'UTSUN SYUW'ENTST**

**Mukw' tu shhw'a'luqw'a' 'o' tth'ele's tu shhwuli**

**The family is the heart of life**

**Ts'iiyulh ch 'u tuni' s-aamustham-mut**

**Give Thanks for what you have been given.**

**Stsielhstuhw tu S-ul'hween**

**Honour the Sul-hweens**

**Thuluqtul ch 'u kwthun' kwunmun**

**Share what you have**

**TI'i' to' mukw' mustimuhw**

**Each person is important**

**Hwial'asmut ch tun' s-ye'lh**

**Take care of your health**

**'lyusstuhw tun'a skweyul**

**Enjoy today**

**Hwial'asmut tu tumuhw**

**Take care of the earth**

**Hiiye'yutul tst 'u to' mukw' stem 'i 'u tun'a tumuhw**

**Everything in nature is a part of our family – we are all relatives**

**Yath ch 'o' lhq'il'**

**Be positive**

## PREAMBLE

Whereas:

Cowichan Tribes is self-determining and in exercising this right, we have the right to self-government.

Cowichan Tribes asserts the existence of our aboriginal title in *stauh tumuhw*, our land, and aboriginal rights. This aboriginal title, and our aboriginal rights, are based on our *Cowichan* laws, our *Snuw'uy'ulh*. Our oral histories connect our people to the land from the beginning of time. Cowichan People recognize the special connections we have to the territory and the resources in it, as we are all descended from our First Ancestors. Our *Snuw'uy'ulh* confirms that we have an inalienable connection to one hundred percent of our traditional territory. Respecting our obligations to our lands and territory is integral to our way of life.

*Smun'eem* are sacred, and their wellness and safety are of the utmost importance to Cowichan Tribes families, communities, and people.

It is the inherent right of *Smun'eem* to be in relation with and have knowledge of their traditional lands and territories.

It is the inherent right of the Cowichan Tribes people to nurture, care and provide for, and protect their *Smun'eem*.

This inherent right to nurture, care and provide for, and protect for *Smun'eem* and families flows from *Cowichan* laws and legal practices and reflects the cultural values and teachings of our *Snuw'uy'ulh*, as held and understood by Cowichan Tribes families.

The relationship and bond between a Cowichan Tribes family and a *Smuneem* is of paramount importance to the future of the family, and to the future of the nation.

In order to nurture, care and provide for, and protect *Smun'eem*, we must also nurture and support Cowichan Tribes' families and communities.

This law, and its accompanying policies, are developed from our *Snuw'uy'ulh*, and reflect the culture, values, beliefs, and customary practices of the Cowichan People.

Kinship is a foundational legal principle of our *Snuw'uy'ulh*. Cowichan laws, responsibilities, traditions, and practices are all centered around kinship relations, which recognize and emphasize the central place of family in our *Snuw'uy'ulh* and culture and seek to protect and preserve those kinship relations.

Our law is a living law, derived from our First Ancestors, and given to the Cowichan People. These teachings begin before birth and extend past death. Cowichan Tribes' people are always learning and always teaching. Therefore, raising children and keeping families balanced and connected in good ways requires the wisdom and knowledge of our *Sul-hween*, families, and those in the community with experience. Just as our community continues to grow and change, so will our laws.

Cowichan Tribes recognizes the harm that Canadian policies regarding Indigenous children and families have done to our nation, its communities, families, and children, and maintains that Cowichan Tribes is best positioned to remedy this harm and begin the long and difficult process

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of bringing healing to the nation, communities, families, and *Smun'een* by stabilizing, healing, and strengthening our kinship relations.

Canada has enacted the *Act respecting First Nations, Inuit and Metis children, youth and families*, SC 2019, c 24, which recognizes Cowichan Tribes' inherent right to self-government regarding child and family services, as recognized and affirmed by s. 35 of the *Constitution Act, 1982*;

Cowichan Tribes will work with Canada and its provinces and territories to implement this Law in a new nation-to-nation relationship.

Therefore, Cowichan Tribes, by and with the ratification of the Cowichan People, enacts as follows:

## 1. COMING INTO FORCE, TITLE, AND INTERPRETATION

### Coming into Force

- 1.1 Council, by and following the ratification by Cowichan Citizens on November 24, 2023, enact the following.
- 1.2 The provisions of this Law come into force on August 1, 2024, except for Parts 1-3, 9, 11, 14 and 15 which come into force on June 11, 2024.

### Title

- 1.3 The title of this Law is *Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqwa'a' i' Smun'eem* [Laws of the Cowichan People for Families and Children].
- 1.4 The headings, recitals, and table of contents are for convenience of reference only and are not intended to describe, enlarge, or restrict the scope or meaning of this Law or any provision of it.
- 1.5 Unless it is otherwise clear from the context, the use of the singular includes the plural, and the use of the plural includes the singular.
- 1.6 "Includes" and "including" are not intended to be limiting.
- 1.7 The word "and" is used in its joint sense, meaning A and B, but not either alone.
- 1.8 The words "will" or "must" denotes an obligation that, unless this Law provides to the contrary, must be carried out as soon as practicable.

### Definitions

- 1.9 In this Law:
  - (a) "Active Efforts" means more than reasonable efforts, and requires thorough, careful and culturally appropriate efforts which are more substantial than a passive attempt;

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- (b) “Alternative Adjudication and Dispute Resolution Body” or “AADRB” means the entity established under section 8.51 for the adjudication and resolution of disputes under this Law.
- (c) “Band Council Resolution” or “BCR” means a validly passed Band Council Resolution made at a duly convened meeting of Council;
- (d) “Board of Directors” or “Board” means the Board of Directors of the *Stsi’elh stuhw’ew’t-hw tun Smun’eem* appointed pursuant to section 11.8;
- (e) “Care” when used in relation to the care of a *Smun’eem* by a worker or another person, means holistic care, including but not limited to physical care, emotional care, cultural care and safety of the *Smun’eem*;
- (f) “Care Provider” means a person other than the *Smun’eem* or Youth’s Parent, who has primary responsibility for providing the day-to-day care of a *Smun’eem* or Youth, including in accordance with the customs or traditions of Cowichan Tribes, and includes a person who cares for a *Smun’eem* or Youth in an out-of-care living arrangement but does not include a Caregiver;
- (g) “Caregiver” means a person with whom a *Smun’eem* is placed by the CEO and who is authorized, pursuant to an agreement with the CEO, to carry out the rights and responsibilities of the CEO;
- (h) “Case Conference” means a case conference, including the Sul-hween Harmony Restoring Advisory, as set out in the *Snuw’uy’ulhtst tu Quw’utsun Mustimuhw u’tu Shwalaqw’a i’ Smun’eem* Regulation;
- (i) “CEO” means the Chief Executive Officer of the *Stsi’elh stuhw’ew’t-hw tun Smun’eem* and includes their delegates;
- (j) “Child” means a person who is 18 years of age or younger;
- (k) “Child and Family Services” means services to support *Smun’eem* and Families, including Support Services, early Intervention Services and child protection services;
- (l) “Citizen” means a person who is registered, or who is entitled to be registered, under the *Cowichan Tribes Shtunni’s Tu Hwulmuhw – Citizenship Code*, as amended or replaced from time to time.
- (m) “Continuing Custody Order” means an order the *Child, Family and Service Act* [RSBC 1996] chapter 46.
- (n) “Coordination Agreement” means an agreement referred to in subsection 20(2) of the Federal Act;
- (o) “Council” means the duly elected Chief and Council of Cowichan Tribes or any successor elected government of Cowichan Tribes that is authorized to act on behalf of the Cowichan Tribes’ people, who hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, including the inherent right of self-government in relation to Child and Family Services;



- (p) “Court” means the Provincial Court of British Columbia except where this Law provides otherwise;
- (q) “Cowichan Tribes” means the self-governing collective of Cowichan Tribes people who hold rights recognized and affirmed by section 35 of the *Constitution Act, 1982* as represented by Council;
- (r) “Critical Injury” means an injury to a person that may result in the person’s death or cause serious or long-term impairment of the person’s health;
- (s) “Custody” includes care and guardianship of a *Smun’eem*;
- (t) “Dispute Resolution Mechanism” means the dispute resolution processes set out in Part 8 of this Law and includes an AADR.
- (u) “Eligible Voters” means, for the purpose of voting in respect of Child and Family Service matters under this Law, a Citizen who has obtained the age of 18 on or before the day of the vote;
- (v) “Enactment” means a Law or Regulation or any portion of a Law or Regulation;
- (w) “Family” means *Smun’eem*, sibling, mother, father and extended family members, whether by blood, cultural adoption, marriage, or a person considered to be a close relative to the Family recognized by the Laws, customs and traditions of the Cowichan people;
- (x) “Federal Act” means the *Act respecting First Nations, Inuit and Metis children, youth and families*, S.C. 2019, c 24;
- (y) “Guardian” means a person appointed to act as the personal guardian or property guardian or both, of a *Smun’eem* and having all the rights, duties and responsibilities of a Parent;
- (z) “Guiding Principles” means the principles set out in section 2.4;
- (aa) “Immediate Danger” means a *Smun’eem* is found without adequate supervision, a *Smun’eem* is lost or has run away, or there are reasonable grounds to believe that a *Smun’eem* is at risk of death or serious physical harm that is immediate or imminent;
- (bb) “Independent Representative” means the person appointed pursuant to section 10.1;
- (cc) “Intervention Services” means all programs and services delivered to a *Smun’eem* and their Family prior to the transfer of guardianship of a *Smun’eem* to the CEO;
- (dd) “Law” means *Snuw’uy’ulhtst tu Quw’utsun Mustimuhw u’ tu Shhw’a’luqwa’a’ i’ Smun’eem* [Laws of the Cowichan People for Families and Children];
- (ee) “Minimum Standards” means the minimum standards established under Part 3 of this Law;

- (ff) “Ongoing Custody Order” means an order placing a *Smun’eem* in the ongoing guardianship, care, and custody of the CEO;
- (gg) “Parent” means:
  - (i) the mother, father, stepmother, or stepfather, as the case may be, of a *Smun’eem* or Youth,
  - (ii) a person to whom guardianship or custody of a *Smun’eem* has been granted by a Court of competent jurisdiction or by an agreement,
  - (iii) a person who has been recognized as the Parent by custom,
 but does not include a Caregiver, prospective adoptive Parent or the CEO;
- (hh) “Police Officer” means a person who has the authority to act
  - (i) under the Royal Canadian Mounted Police Act, RSC 1985, c R-10; or
  - (ii) under the *Police Act*, RSBC 1996, c 367;
- (iii) “Presentation Hearing” mean a hearing that is summary in nature;
- (ii) “Protection Order” includes a consent order, a supervision order, an order that the *Smun’eem* be returned to or remain in the care, custody and guardianship of the Parent entitled to custody, an order that the *Smun’eem* be placed in the care, custody and guardianship of a person other than the Parent, or an order that the *Smun’eem* be placed in the ongoing custody of the CEO;
- (jj) “Removal” means to take a *Smun’eem* into the day-to-day care, custody and/or guardianship of the CEO;
- (kk) “Regulation” includes a BCR, order, regulation, rule, rule of Court, form, tariff of costs or fees, proclamation, by-law, resolution or other instrument issued, made or established:
  - (i) in the execution of a power conferred by or under the authority of this Law, or
  - (ii) by or under the authority of Council;
- (ll) “Service Delivery Area” means the geographic area designated by BCR within which the *Stsi’elh stuhw’ew’t-hw tun Smun’eem* will administer and implement this Law;
- (mm) “*Smun’eem*” means a Child who is registered or entitled to be registered under the *Cowichan Tribes Shtunni’s Tu Hwulmuhw – Citizenship Code*, as amended or replaced from time to time and includes a Youth;
- (nn) “*Smun’eem* Blanketing Committee” means the *Smun’eem* Blanketing Committee established pursuant to section 4.17;

- (oo) “*Snuw’uy’ulh*” means a set of teachings, including the traditional beliefs, customary practices and laws of the Cowichan people;
- (pp) “Speaker” means a respected and trusted individual chosen by a *Smun’eem*, or Family, to speak on their behalf;
- (qq) “*Stsi’elh stuhw tu smun’eem*” [Honouring Our Sacred Children and Families Agency] means the agency of the *Stsi’elh stuhw’ew’t-hw tun Smun’eem* responsible for delivery of Child and Family Services under this Law;
- (rr) “*Stsi’elh stuhw’ew’t-hw tun Smun’eem*” [The House Where we Treat our Children with Respect] means the separate legal entity established pursuant to section 11.1;
- (ss) “*Sul-hween* Committee” means the *Sul-hween* Committee established pursuant to section 4.12;
- (tt) “*Sul-hween*” means a Citizen recognized by Cowichan Tribes as an elder;
- (uu) “*Sul-hween* Harmony Restoring Advisory” or “SHRA” means the entity established pursuant to section 8.9;
- (vv) “Supervision Order” means an order made requiring a worker to supervise the care of a *Smun’eem* and includes any extension of or change to that order;
- (ww) “Support Services” means services that are intended to stabilize and strengthen a) Family relationships, b) parenting skills, c) life skills, d) health care, and e) cultural and language knowledge and skills, and include prenatal services;
- (xx) “Temporary Custody Order” means an order placing a *Smun’eem* in the custody of the CEO for a specified period of time, and includes any extension or change to that order;
- (yy) “*Tumuhw*” has the meaning given it in section 2.1 of the *Quw’utsun Tumuhw* [Land Code], effective November 1, 2019 (as amended);
- (zz) “Youth” means a *Smun’eem* who is 16 years of age or over but is under 19 years of age; and
- (aaa) “Young Adult” means a person who is 19 years of age or over but is under 27 years of age.

## **2. PURPOSE AND GUIDING PRINCIPLES**

### **Purpose**

- 2.1 The purpose of this Law is to
- (a) assert Cowichan Tribes’ right to self-determination;

- (b) exercise and implement the inherent right of self-government of Cowichan Tribes, which includes jurisdiction in relation to Child and Family Services, recognized under section 35 of the *Constitution Act, 1982*;
- (c) set out principles and standards, applicable on a national level, to the provision of Child and Family Services in relation to *Smun'eem*;
- (d) facilitate the return of *Smun'eem* to the jurisdiction of Cowichan Tribes, and the return to their Family and community;
- (e) strengthen Family and maintain familial relations; and
- (f) provide for the relationship of laws consistent with the Federal Act, which provides that this Law prevails when a federal or provincial law conflicts with this law.

2.2 Nothing in the *Snuw'uy'ulhtst tu Quw'utsun Mustimuhw u' tu Shhw'a'luqw'a' i' Smun'eem* purpose shall be construed so as to abrogate or derogate from the inherent rights, treaty rights and aboriginal rights of Cowichan Tribes.

2.3 All persons, agencies and entities having powers or duties under this Law will carry out those powers and duties in a manner consistent with the express purposes of this Law.

### **Guiding Principles**

2.4 This Law must be interpreted and administered in accordance with our *Snuw'uy'ulh*, reflected in the following Guiding Principles, in order to secure the physical, emotional and psychological safety, security and well-being of a *Smun'eem*:

- (a) *Shtun'ni'iw's* [where you originate from]:
  - (i) Cowichan Tribes identity and cultural continuity is essential to the well-being of a *Smun'eem*, a Cowichan Tribes Family and the Cowichan Tribes community;
  - (ii) a *Smun'eem* has the right to know who they are, who they are related to, what lands and places they are connected to, and to be in relationship with their community;
  - (iii) the best interests of a *Smun'eem* are upheld when a *Smun'eem* is made aware of and provided with teachings and knowledge regarding who they are, who their relations are, their histories, their customary rights, their traditional territory and their community;
  - (iv) grandparents and other Family members play an integral role in passing down knowledge relating to Cowichan Tribes identity;
  - (v) the best interests of a *Smun'eem* are upheld when a *Smun'eem* resides with members of their Family and in their traditional territory.
- (b) *'uqwitul* [ensuring our familial relationships are strong and respectful]:

- (i) Cowichan Tribes Families extend beyond the immediate Family to the *Smun'eem sulsil'u* [grandparents], *thunu shhwum'nikw* [aunts], *tthunu shhwum'nikw* [uncles], *'uqw'i'tul* [cousins] and other *tslhnuts'amat* [family members] who have a close relationship with the *Smun'eem*;
  - (ii) whereas *Smun'eem shhwuw'wuli* [parents] have direct responsibility for the care of the *Smun'eem*, the *sulsil'u* [grandparents], particularly *thunu si'lu* [grandmothers], have an inherent responsibility to oversee the well-being of their grandchildren, and to teach their grandchildren our *Snuw'uy'ulh*, and Cowichan ways of knowing and being. *Thunu shhwum'nikw* [aunts] and *tthunu shhwum'nikw* [uncles] also have a responsibility to provide guidance and teachings to their *thunu stiwun* [nieces] and *tthunu stiwun* [nephews];
  - (iii) the best interests of a *Smun'eem* are upheld when a *Smun'eem* resides with members of their Family and when those kinship relations are actively maintained for the benefit of the *Smun'eem*, the Family and the community;
  - (iv) all Family members have an important role to play in the life of a *Smun'eem* and those roles and responsibilities should be considered in decision-making about a *Smun'eem*, as long as it is within the best interests of the *Smun'eem*; and
  - (v) a relationship between a *Smun'eem* and their Parents is of paramount importance to the overall well-being of a *Smun'eem* and therefore every available measure must be exhausted to maintain the relationship between a *Smun'eem* and their Parents before any step is taken that may sever that relationship.
- (c) *Mukw' tu shhw'a'luqw'a' 'o' tth'ele's tu shhwuli* [Family is the heart of life]:
- (i) *Snuw'uy'ulh* teaches that Family is the heart of life;
  - (ii) it is the responsibility of every Citizen to ensure the safety and well-being of a *Smun'eem*;
  - (iii) Family has the primary responsibility to care for a *Smun'eem*;
  - (iv) practice that is Family-centered is in the best interest of a *Smun'eem*; and
  - (v) we must all work together in a respectful and loving way to ensure the safety and well-being of a *Smun'eem*.
- (d) *Tl'i' tul tst* [love]:
- (i) love and compassion are important foundations in Family and community relationships;
  - (ii) the best interests of a *Smun'eem* are upheld when a *Smun'eem* feels that they and their Family members are treated with love and compassion; and
  - (iii) we recognize that because of colonialism and inter-generational trauma we all share struggles, and therefore, the characteristics and challenges of the Cowichan Tribes people are to be considered in decision-making.

- (e) *Si'emstuhw* [respect]:
- (i) every person is important to the health and well-being of our community, and as such, every person deserves to be treated with respect;
  - (ii) respecting our Families and the responsibilities associated with our Families, helps us to respect who we are and our place within the Cowichan Tribes community;
  - (iii) in respecting all things, we respect the Creator;
  - (iv) respect helps us to live a good life and helps us to follow our teachings in the ways we learn, teach, work, and interact with others; and
  - (v) the best interests of a *Smun'eem* are upheld when a *Smun'eem* feels that they, and all their relations, are treated with respect.
- (f) *Ts'its'uwatul'i* [helping one another]:
- (i) we are the caretakers of our Families, and we must support each other to protect and preserve our Families, and all Families within our community;
  - (ii) what we have is not as important as what we share with our Family, and how we selflessly reach out to help other Families within our community, this is evidenced by our ceremonies which are a means of being generous, of celebrating and helping our relations, and of creating connections with others;
  - (iii) working with others within and outside of our Families to support one another, honour one another, and celebrate with one another helps us to develop relationships and resolve conflicts and teaches us to be selfless and to recognize that our interests are best served by building deeper and enduring connections to all Families in our community;
  - (iv) the best interests of a *Smun'eem* are upheld when the community works to actively support the Family, and in turn, enable the Family to support their *Smun'eem*;
  - (v) the rights and distinct needs of a *Smun'eem* with a disability are to be considered in order to promote the participation of a *Smun'eem*, to the same extent as other *Smun'eem*, in the activities of their Family or Cowichan Tribes;
- (g) *Thu'it stuhw tu shqwalawun* [trust/focused in your thoughts and mind]:
- (i) *Smun'eem* and their Family members must be able to exercise their rights under this Law, including the right to have their views and preferences considered in decisions that affect them, and they must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;

- (ii) both a *Smun'eem* and a Family member of a *Smun'eem* have a right to appoint a Speaker, or another trusted helper or advocate, to help ensure their ability to exercise their rights.
- (h) *Hwi-ulasmutul'l* [looking after one another]:
- (i) teachings about the importance of protection are implicit in our *Snuw'uy'ulh*;
  - (ii) our stories and customary practices teach the importance of protecting all our relations as a way of honouring and showing respect to all our relations;
  - (iii) these teachings are never more pronounced than when an individual or Family stands in a position of vulnerability or danger, or when an individual or Family is in need of spiritual help, because of their personal or familial circumstances;
  - (iv) everyone owes every *Smun'eem* an obligation to protect them when the *Smun'eem* is in a potentially harmful circumstance;
  - (v) by protecting the Family of a *Smun'eem*, we in turn, protect the *Smun'eem*.
- (i) *Nuts'a'maat shqwaluwun* [Working Together with One Mind, One Heart, One Spirit]:
- (i) our *Snuw'uy'ulh* teaches us that working together to make a decision is just as important as the decision itself;
  - (ii) a process of collaboration helps to build sustainable outcomes and sustainable relationships;
  - (iii) collaboration processes build connections and develops the strength of our Families and communities;
  - (iv) collaboration processes enable all individuals to participate, and helps participants to work past divisive conflicts and rebuild their connections and commitments to each other;
  - (v) collaboration processes must be considered in decision-making under this Law.
- (j) *Tl'l' to' mukw' mustimuhw* [each person is important]
- (i) our *Snuw'uy'ulh* teaches us to respect our differences;
  - (ii) each person is important because we are all different and bring various strengths and fulfill different needs in our Families and communities;
  - (iii) respecting difference means that each *Smun'eem* and Family may require different supports and services to enable them to thrive;
  - (iv) treatment that is the same for everyone may lead to inequality among certain *Smun'eem* and Families in our communities;

- (v) this principle includes the concept of substantive equality, which seeks to remedy distinctions in law, policy or programs that have the effect of perpetuating arbitrary disadvantages against certain groups of people;
- (vi) decision-makers must consider the history of colonialism and current and past systems, structures, laws and policies and their effects on *Smun'eem* and Families of *Smun'eem* when implementing and administering this Law.

### **Rights of a *Smun'eem***

- 2.5 A *Smun'eem* enjoys all the legal rights and privileges of a Child from our *Snuw'uy'ulh*, the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act*, the *United Nations Declaration on the Rights of Indigenous Peoples*, the *United Nations Declaration on the Rights of the Child*, and the *United Nations Convention on the Rights of the Child*.
- 2.6 *Stsi'elh stuhw'ew't-hw tun Smun'eem* will establish processes and mechanisms to enable a *Smun'eem* to assert and effectively exercise their rights under this Law, either directly or through a trusted Speaker, including by:
- (a) receiving teachings and knowledge regarding their rights and interests under this Law, including the Guiding Principles, Minimum Standards and Dispute Resolution Mechanisms;
  - (b) expressing their views and preferences about decisions that affect them;
  - (c) seeking review of decisions that affect them; and
  - (d) accessing culturally appropriate Child and Family Services and supports they need when they need them.
- 2.7 All *Smun'eem* have the right to access health care, education, social services, and ceremonial and cultural services without discrimination.

### **3. MINIMUM STANDARDS**

- 3.1 In addition to the Guiding Principles, the Minimum Standards set out in this Part apply to the provision of all Child and Family Services involving a *Smun'eem* and their Family.

#### **Best Interests of the *Smun'eem***

- 3.2 Where there is reference in this Law to the best interests of a *Smun'eem*, all factors related to the circumstances of the *Smun'eem* must be considered in determining the best interests of the *Smun'eem*, including,
- (a) the right of a *Smun'eem* to know their identity, including but not limited to their ancestral rights, family histories and family teachings;



- (b) the right of a *Smun'eem* to have access to and the opportunity to learn the *Hul'qumi'num* language;
- (c) the right of a *Smun'eem* to have access, under the direction of their Family, to ceremonies and protocols that enable them to exercise their sacred ancestral rights;
- (d) the needs of a *Smun'eem*, given the age and stage of development of the *Smun'eem*, such as the need of the *Smun'eem* to feel loved and secure;
- (e) the importance of maintaining strong and positive kinship relations with individuals the *Smun'eem* considers Family;
- (f) the importance to the *Smun'eem* of preserving their cultural identity and connections to the language, customary practices, and territory of the Cowichan Tribes people;
- (g) the views and preferences of the *Smun'eem*, giving due weight to the age and maturity of the *Smun'eem*, unless they cannot be ascertained;
- (h) any care plans for the *Smun'eem*, including care in accordance Cowichan Tribes customary caregiving practices;
- (i) any family violence and its impact on the *Smun'eem*, including whether the *Smun'eem* is directly or indirectly exposed to the family violence as well as the physical, emotional, and psychological harm or risk of harm to the *Smun'eem*; and
- (j) any civil or criminal proceeding, order, condition, or measure that is relevant to the current safety, security and well-being of the *Smun'eem*.

3.3 Reasonable efforts must be made to obtain information about the views and preferences of the *Smun'eem* under subsection 3.2(g) in a manner that is culturally acceptable, taking into consideration the mental, physical and psychological capacity of the *Smun'eem*.

3.4 In order to promote substantive equality between a *Smun'eem* and other children, a jurisdictional dispute must not result in a gap in the Child and Family Services that are provided in relation to the *Smun'eem*.

### **Effect of Services**

3.5 The Guiding Principles must direct the provision of Child and Family Services in a manner which has the effect of realizing the intent and purpose of this Law.

### **Socio-Economic Conditions**

3.6 To the extent that it is consistent with the best interests of the *Smun'eem*, a *Smun'eem* must not be removed from their Parents solely on the basis of their socio-economic

conditions, including poverty, lack of adequate housing or infrastructure or the state of health of their Parent or the Care Provider.

- 3.7 Where there are concerns about a *Smun'eem* due to socio-economic conditions, service providers will assist Parents and work to improve the socio-economic conditions through available resources, in order to meet the best interests of the *Smun'eem*.

### **Priority to Support Services**

- 3.8 Cowichan Tribes supports a holistic approach to Child and Family Services that creates a “circle-of-care” around the *Smun'eem* to ensure their well-being throughout their life in the community.
- 3.9 To the extent that providing a service that promotes preventive care to support the Family of the *Smun'eem* is consistent with the best interests of the *Smun'eem*, the provision of that service will be given priority over other services.
- 3.10 If Support Services are not adequate to ensure the best interests of a *Smun'eem*, early intervention and community-based alternatives take priority over more intrusive measures.

### **Active Efforts**

- 3.11 When providing any Child and Family Services, Active Efforts must be made to ensure the best interests of the *Smun'eem* are met.

### **Placement of a Child**

- 3.12 When deciding where to place a *Smun'eem*, the CEO must consider the best interests of the *Smun'eem*, having regard to the safety of the *Smun'eem* and the Guiding Principles, and must place the *Smun'eem* in accordance with the following order of priority:
- (a) with one of the Parents of the *Smun'eem*;
  - (b) with a Family member of the *Smun'eem*;
  - (c) with a Citizen of another Cowichan Tribes Family residing in the vicinity of the usual place of residence of the *Smun'eem*;
  - (d) with an Indigenous person; or
  - (e) only if the *Smun'eem* cannot be safely placed under subsections (a) – (d), with a non-Indigenous person.
    - (i) The CEO must not place a *Smun'eem* with a person under subsection (d) or (e), unless the CEO has first consulted with the Family of the *Smun'eem* and with the *Sul-hween* Committee and has determined the placement is in the best interests of the *Smun'eem*.

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- 3.13 Taking into consideration the order of priority for placements in section 3.12, the possibility of placing the *Smun'eem* with or near *Smun'eem* who have the same Parent as the *Smun'eem*, or who are otherwise members of the Family of the *Smun'eem*, must be considered in the determination of whether a placement would be consistent with the best interests of the *Smun'eem*;
- 3.14 The placement of a *Smun'eem* must take into account the cultural practices and traditions of the Cowichan Tribes people, including ancestral rights and customary care practices.
- 3.15 In the context of providing Child and Family Services in relation to a *Smun'eem*, there must be reassessments taking into consideration the best interests of the *Smun'eem*, conducted at least every other month, of whether it would be appropriate to place the *Smun'eem* with
- (a) the Parent of the *Smun'eem*, if the *Smun'eem* does not reside with such a Parent; or
  - (b) with another member of the Family of the *Smun'eem*, if the *Smun'eem* does not already reside with a member of their Family or a Parent.
- 3.16 In the context of providing Child and Family Services in relation to a *Smun'eem*, if the *Smun'eem* is not placed with a member of their Family in accordance with this Law, to the extent that doing so is consistent with the best interests of the *Smun'eem*, the attachment and emotional ties of the *Smun'eem* to each such member of their Family are to be promoted through Active Efforts.

### **Families Where Two Or More Indigenous Nations' Child and Family Laws Apply**

- 3.17 Where a *Smun'eem* and Family belong to one or more Indigenous nations who have a child and family services law, the Council may engage in discussions with the other Indigenous nation in order to reach agreement on which law, or parts thereof, will apply to a *Smun'eem*.
- 3.18 *Stsi'elh stuhw'ew't-hw tun Smun'eem* may enter into protocol agreements with other Indigenous nations, or service delivery agencies, to determine how nations will cooperate on operational and working relationship matters.
- 3.19 If the Council and other Indigenous nation cannot reach agreement, on which law, or parts thereof, will apply to a *Smun'eem*, and there is a conflict or inconsistency between the two laws, then the law of the Indigenous nation to which the *Smun'eem* has stronger ties, will prevail to the extent of the conflict or inconsistency.
- 3.20 Where a determination is to be made regarding a *Smun'eem* stronger ties to an Indigenous nation or community, the *Stsi'elh stuhw'ew't-hw tun Smun'eem*, another Indigenous governing body, a service provider, or decision-making body must prioritize consideration of the Guiding Principles set out in this Law, and may consider:

- (a) self-identification by the *Smun'eem*, if the *Smun'eem* is of sufficient age and capacity to meaningfully self-identify;
- (b) preference of the Parents;
- (c) the interests asserted by each Indigenous nation;
- (d) the length of residence on or near *Tumuhw*, or the lands of each Indigenous nation, and the frequency of contact with each nation; or
- (e) the participation of the *Smun'eem* in the activities of each Indigenous nation;

3.21 A determination of stronger ties for the purpose of providing Child and Family Services does not constitute a determination of citizenship for any other purpose.

#### **4. COLLABORATIVE DECISION MAKING**

##### ***nuts'a'maat shqwaluwun* [Working Together with One Mind, One Heart, One Spirit]:**

- 4.1 *Smun'eem* are the collective responsibility of the Cowichan Tribes community.
- 4.2 Every Cowichan Tribes Citizen has a role to play in the life of a *Smun'eem* and a responsibility to ensure that *Smun'eem* are provided with the opportunity to flourish and thrive, physically, emotionally, and psychologically.
- 4.3 Collaboration enables the CEO to make assessments and judgments based on a balance of information regarding the best interests of the *Smun'eem*.

##### **Accountability to Cowichan Tribes Families**

- 4.4 In accordance with the Guiding Principles and Minimum Standards, services will be delivered in a manner that has the effect of building trust and working together with Cowichan Families.
- 4.5 This child and family-centered practice will begin at the point of initial report or contact with the CEO.
- 4.6 The CEO will gather information, including the Family strengths, from knowledgeable sources, including those who are concerned about safety of the *Smun'eem*, affirming a family-centered practice, and collaborate to help overcome any negative assumptions that may exist about the Family.
- 4.7 When providing services, the CEO will maintain regular contact with the Family of a *Smun'eem*, and report on the progress of any Intervention Services.

##### **Grandparent Collaboration**

- 4.8 In accordance with the Guiding Principles, the grandparent of a *Smun'eem* plays an important role in the well-being of a *Smun'eem*.

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- 4.9 At all stages of a Child and Family Services intervention, priority will be given to collaborating with the grandparent of a *Smun'eem* about a family resolution to alleviate the safety issues and, if necessary, choice of placement option, unless collaboration with the grandparent is not in the best interests of the *Smun'eem*.

### **Family Spokesperson Collaboration**

- 4.10 In accordance with the Guiding Principles and the purpose of this Law, a Family spokesperson may be consulted to ensure that decision-makers are aware of the specific circumstances of a *Smun'eem* and the Family.
- 4.11 The CEO will exercise due diligence to identify and contact the family spokesperson of a *Smun'eem*, which may include grandparents, adult aunts and uncles, adult siblings, adult first cousins, and other close family members identified by those persons, for assistance in meeting the needs of the *Smun'eem* and Family, and collaboration regarding Intervention Services including, but not limited to, any necessary placement provisions.

### **Sul-hween Committee**

- 4.12 In accordance with the Guiding Principles and the purpose of this Law, a *Sul-hween* Committee will be formed to help ensure that the decision-making processes are guided by our *Snuw'uy'ulh*.
- 4.13 The *Sul-hween* Committee will be comprised of five *Sul-hween* and will be appointed by BCR. The *Sul-hween* Committee will select its chairperson and adopt its own manner of meeting and proceeding to carry out its responsibilities.
- 4.14 The *Sul-hween* Committee will provide advice to the CEO and consult with Cowichan Tribes Families in order to assist in finding the least disruptive support service for Families.
- 4.15 When privy to information that is confidential, *Sul-hween* Committee members must safeguard the information from further release. The *Sul-hween* Committee will prepare and adopt a code of conduct on topics including confidentiality and conflicts of interest. Each member of the *Sul-hween* Committee will sign the code of conduct and abide by its provisions.
- 4.16 The chair of the *Sul-hween* Committee will designate a member to serve on the *Smun'eem* Blanketing Committee

### **Smun'eem Blanketing Committee**

- 4.17 In accordance with the Guiding Principles and the purpose of this Law, a *Smun'eem* Blanketing Committee will be formed to restore honour to the *Smun'eem* and their respective Family, and shield them from further harm.

- 4.18 The *Smun'eem* Blanketing Committee consists of representatives from the *Sul-hween* Committee, *Stsi'elh stuhw tu Smun'eem*, the Cowichan Tribes Justice Committee, the Quw'utsun *Syuw'entst Lelum'* Culture and Education Centre, Ts'ewulhtun Health, the Sustainable Housing Department and Social Development. The *Smun'eem* Blanketing Committee will act as an advisory body as required.
- 4.19 The *Smun'eem* Blanketing Committee will meet as needed to advise and consult:
- (a) on matters brought before it by the CEO; or
  - (b) Cowichan Tribes designated representatives.

## 5. SUPPORT SERVICES

### Support Services

- 5.1 Support Services that enable *Smun'eem* to flourish, thrive and take into consideration the social determinants of health, *Smun'eem* well-being, Family well-being and community well-being, will be the first priority for Cowichan Tribes in the provision of, and funding for, Child and Family Services.
- 5.2 Basic support services will be offered to all Cowichan Tribes families that wish to participate. These services are intended to stabilize and strengthen: a) Family relationships, b) parenting skills, c) life skills, d) health care, and e) cultural and language knowledge and skills.
- 5.3 Support Services may be offered to Cowichan Tribes families that need extra support. These services are intended to assist overcoming situations of poverty, lack of adequate housing, substance abuse, mental health, child-abuse and neglect, weak parenting skills, and a lack of alternative care options which are common parental and community issues that lead to involvement in the Child and Family Service system.

### Support Services for Families

- 5.4 In accordance with this Law, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* will provide Support Services to *Smun'eem* and Families through *Stsi'elh stuhw tu Smun'eem*, subject to fiscal resources, which may include selected priorities from the following areas, including but not limited to:
- (a) Family support including, group homes, parenting programs, play therapy, child and youth counsellors (culturally/internal), sexual violence programs, day care and after school care;
  - (b) domestic violence;
  - (c) services for *Smun'eem*, including special needs;

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- (d) counselling and healing focused programming for intergenerational trauma healing
- (e) mediation;
- (f) services to assist families overcome poverty;
- (g) services to assist families improve their housing situation including, a “safe home” model for families in a reunification phase;
- (h) services to assist the family deal with the illness of a *Smun’eem* or a family member;
- (i) in-home support;
- (j) respite care;
- (k) services to support *Smun’eem* who witness family violence;
- (l) family development activities;
- (m) advocacy to navigate governmental systems;
- (n) youth camps and mentoring programs;
- (o) family conference and suicide prevention conference;
- (p) mental health supports;
- (q) substance abuse treatment and rehabilitation;
- (r) healing circles and a wellness center;
- (s) support for *Sul-hween’s* cultural knowledge keepers;
- (t) services to assist where a *Smun’eem* is lost, run away or has been absent from home in circumstances that endanger the safety or well-being of a *Smun’eem*;
- (u) holistic healing village with wrap around services; and
- (v) LGBTQ2SIA support services.

### **Support Services for Youth**

5.5 The *Stsi’elh stuhw’ew’t-hw tun Smun’eem* may establish support services for Youth, including but not limited to:

- (a) safe housing;
- (b) prevention programming;
- (c) educational supports and programs;

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- (d) outreach services; and
- (e) supported living arrangements.

### **Post-Majority Care Support Services**

- 5.6 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* will establish policies to provide post-majority care services through a continuum of supports for Young Adults formerly in care, to assist them with their transition to adulthood upon reaching the age of 19 until they reach the age of 27.
- 5.7 Post-majority care services aim to support the safety and well-being of Young Adults in an approach that is culturally appropriate, in their self-identified best interest, and provided based on the principle of *Tl'l' to' mukw' mustimuhw*.
- 5.8 In accordance with this Law, and subject to fiscal resources, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* will provide for post-majority care to support the delivery of wrap around services that promote and support holistic positive outcomes for thriving Young Adults. Supports that meets the distinct needs of Young Adults formerly in care could include assistance with housing, food, education, employment and financial security, mental health, wellness, addiction supports, cultural supports and healthy relationships.

## **6. EARLY INTERVENTION SERVICES**

- 6.1 Early Intervention Services will be the initial and primary method for service delivery when intervention may be needed.
- 6.2 Early Intervention Service measures should be aimed at achieving the optimal development for all *Smun'eem*. In circumstances where a *Smun'eem* is deprived of the right to minimal physical, mental, spiritual, moral, psychological, and social development standards of safety, health, and nurture, the CEO will intervene in the best interests of the *Smun'eem*, to preserve and protect the rights of the *Smun'eem*.

### **Duty to Report**

- 6.3 A person who has reasonable grounds to believe that a *Smun'eem* needs protection under section 6.9 will immediately report the information on which they base their belief to the CEO or a person designated by the CEO, or the MCFD director or a person designated by the MCFD director.
- 6.4 The duty to report applies even if the information on which the belief is:
  - (a) confidential, and disclosure of the information is prohibited under another law; or
  - (b) privileged, except because of solicitor-client relationship.



- 6.5 No person will knowingly report false information that a *Smun'eem* needs protection under section 6.9.
- 6.6 No action may be brought against a person for reporting the information unless the person knowingly reports false information.
- 6.7 No person will disclose, except as required by an order of the Court or a judge, the identity of, or information that would identify, a person who made the report without the consent of the person.

### **Conducting an Assessment**

- 6.8 On receiving a report, the CEO will commence a safety assessment as soon as possible, and in no case later than 24 hours of receipt of the report, to determine whether the *Smun'eem* needs protective intervention, and whether the matter should include any support or intervention processes.
- 6.9 The CEO will be required to conduct a safety assessment whenever there is a report that a *Smun'eem* may require protective intervention in the following circumstances:
- (a) if the *Smun'eem* has been, or is likely to be, physically harmed by the Parent or Care Provider of the *Smun'eem* or by another person and the Parent or Care Provider of the *Smun'eem* is unwilling or unable to protect the *Smun'eem*;
  - (b) if the *Smun'eem* has been, or is likely to be, sexually abused or exploited, including by encouraging, coercing or enticing to engage in prostitution, by the Parent or Care Provider of the *Smun'eem* or by another person and if the Parent or Care Provider of the *Smun'eem* is unwilling or unable to protect the *Smun'eem*;
  - (c) if the *Smun'eem* has been, or is likely to be, physically harmed because of neglect by the Parent or Care Provider of the *Smun'eem* by depriving the *Smun'eem* of adequate food, clothing, shelter or necessary medical care, which is necessary for the health, safety, development or well-being of the *Smun'eem*, and the deprivation is not due to situations of poverty resulting in the lack of the necessary resources being available to the Parent or Care Provider;
  - (d) if the *Smun'eem* has been, or likely to be, physically or emotionally harmed because of the excessive abuse of alcohol or other controlled substances by the Parent or Care Provider;
  - (e) if the Parent or Care Provider of the *Smun'eem* is unable or unwilling to care for the *Smun'eem* and has not made adequate provision for the care of the *Smun'eem*;
  - (f) if the Parent or Care Provider of the *Smun'eem* is deceased and adequate provision, including legal guardianship has not been made for the care of the *Smun'eem*;

- (g) if the *Smun'eem* has been abandoned, or left in any premise or vehicle, without adequate provision for supervision or care;
- (h) if the *Smun'eem* is in the care, custody or guardianship of another person by agreement and the Parent of the *Smun'eem* is unwilling or unable to resume care when the agreement is no longer in force;
- (i) if the *Smun'eem* demonstrates emotional harm including severe anxiety, depression, withdrawal, self-destructive or aggressive behavior and Parent or Care Provider's response is not adequate to meet the needs of the *Smun'eem* or is caused by the conduct of the Parent or Care Provider; or
- (j) if the *Smun'eem* has witnessed significant domestic violence and the Parent or Care Provider of the *Smun'eem* has failed to take steps to eliminate the risk of the *Smun'eem* witnessing that domestic violence.

### **Conducting an Investigation**

- 6.10 A Parent or Care Provider of a *Smun'eem* will permit the *Smun'eem* to be visited and interviewed in private by the CEO conducting an investigation.
- 6.11 Where the CEO is denied access to a *Smun'eem*, and the CEO has reasonable grounds to believe that the *Smun'eem* may be in need of protective intervention, the CEO may apply to a judge for an order without notice to any person.
- 6.12 If the judge is satisfied that the CEO has reasonable grounds to believe that the *Smun'eem* may need protective intervention, and the CEO has been denied access to the *Smun'eem* by a person, the judge may grant one or more of the following orders;
  - (a) the person discloses the location of the *Smun'eem*;
  - (b) the person allows the CEO to interview or visually examine the *Smun'eem*;
  - (c) the CEO be authorized to enter and remove the *Smun'eem* from the place where the *Smun'eem* is located and transport them to a place for an interview or medical examination; or
  - (d) a health care provider be authorized to examine the *Smun'eem*.
- 6.13 If a person does not comply with an order under s. 6.12, the Court may issue a warrant for the person's arrest and bring the person before the Court to explain why the order should not be enforced.
- 6.14 If the Court is not satisfied that the person appearing before the Court was or continues to be unable to comply with the order for valid reasons, the Court may order that the person be imprisoned for the shorter of the following periods:
  - (a) until the person complies with the order; or
  - (b) 30 days.

- 6.15 The CEO will refuse to investigate or continue investigating a report if satisfied that the report is false, frivolous, vexatious, or malicious; or that there is insufficient evidence to warrant further investigation.

## 7. INTERVENTION OPTIONS

- 7.1 After an assessment of a report, or other information, reveals that a *Smun'eem* and Family is in need of Intervention Services, the CEO may facilitate any of the following options.

### Least Disruptive Intervention Measures

- 7.2 When taking any intervention action, the CEO must make Active Efforts to find the least disruptive means of assisting the Parent, which may include the following;
- (a) offering Support Services;
  - (b) engaging in a grandparent collaboration process;
  - (c) providing notice to and facilitating a family meeting with the Family spokesperson and extended Family;
  - (d) a culturally based Family arrangement or written agreement;
  - (e) collaborating with the *Sul-hween* committee or the *Smun'eem* Blanketing Committee; or
  - (f) working with a First Nations designated representative.

### Culturally-Based Voluntary Family Arrangements.

- 7.3 Culturally-based voluntary Family arrangements are based on our *Snuw'uy'ulh* and the teaching and customary practice that *Smun'eem* may be raised by their grandparents or other Family members.
- 7.4 Culturally-based voluntary family arrangements are made by verbal understandings and commitments.
- 7.5 An in-home, culturally-based voluntary family arrangement is an informal, voluntary arrangement that is culturally-based with a Parent or Care Provider of a *Smun'eem* that will permit the *Smun'eem* to remain in the family home.
- 7.6 The CEO may work with the Parents and Family members and offer support services to assist the Parents in addressing the identified risks to meet the best interests of the *Smun'eem*.

### Out-of-Home Culturally-based Voluntary Family Arrangements

- 7.7 The CEO may facilitate a culturally-based informal, verbal, voluntary arrangement with a Parent or Care Provider of a *Smun'eem* that is temporarily unable to look after the *Smun'eem* in the home.
- 7.8 Where a *Smun'eem* is to be cared for out of the Parent's or Care Provider's home, the CEO will work with the Parent to establish a voluntary arrangement with a person from the Family or another person, if the person:
- (a) has a cultural or traditional responsibility towards the *Smun'eem*, or has established a relationship with the *Smun'eem*; and
  - (b) is given physical care and control of the *Smun'eem* by the Parent of the *Smun'eem*.
- 7.9 Depending on the age and capacity of the *Smun'eem*, the CEO must:
- (a) consider the views of the *Smun'eem* about the arrangement; and
  - (b) explain the effect of the arrangement.
- 7.10 Any voluntary arrangement may provide for conditions, including financial support, that are determined by and agreed to between the Parent and the CEO.
- 7.11 Any voluntary arrangement may follow cultural protocols, including the calling of witnesses and hiring of cultural workers to offer guidance and instruction.
- 7.12 The obligation will be with the Parents to comply with the voluntary arrangement.

#### **Written Voluntary Care Agreement.**

- 7.13 Where the Parent or Care Provider of a *Smun'eem* is temporarily unable to look after the *Smun'eem* in the home, they may enter into a written, voluntary care agreement with the CEO. Under the agreement, the Parent or Care Provider may delegate to the CEO, or a Family member, as much of the Parent or Care Provider's authority for the care, custody, and guardianship of the *Smun'eem* as is required to give effect to the agreement.
- 7.14 The CEO may enter into an agreement with a person from the Family of a *Smun'eem* or another person, to provide for the placement of the *Smun'eem*, if the person:
- (a) has a cultural or traditional responsibility towards the *Smun'eem* or has established a relationship with the *Smun'eem*; and
  - (b) is given physical care and control of the *Smun'eem* by the Parent or Care Provider of the *Smun'eem*.
- 7.15 The agreement may provide for the financial support of the *Smun'eem* while the *Smun'eem* is in the person's care.
- 7.16 Depending on the age and capacity of the *Smun'eem*, the CEO must:

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- (a) consider the views of the *Smun'eem* about the agreement; and
- (b) explain the effect of the agreement.

7.17 The agreement must include, but is not limited to:

- (a) a description of the plan of care for the *Smun'eem*, including where the *Smun'eem* will reside;
- (b) where the CEO has guardianship, a commitment by the CEO to keep the Parent or Care Provider informed of the progress of the *Smun'eem* and involve the Parent and Extended Family in decisions affecting the *Smun'eem*; and
- (c) a commitment by the Parent to maintain contact with the *Smun'eem*, including the details of the contract.

7.18 The term of the agreement will be as agreed between the Parent or Care Provider and the CEO.

7.19 Where the Parent does not resume care of the *Smun'eem*, the agreement ends.

#### **Immediate Danger**

7.20 Where a *Smun'eem* is in Immediate Danger, the CEO or a Police Officer may promptly take charge of the *Smun'eem* for a period of up to 72 hours.

7.21 The CEO may, without a Court order and without the consent of the Parent, enter any premises or vehicle, or board any vessel for the purpose of taking charge of a *Smun'eem* if:

- (a) the CEO has reasonable grounds to believe that the *Smun'eem* is in the premises or vehicle or on the vessel; and
- (b) a person denies the CEO access to the *Smun'eem* or no one is available to allow access to the *Smun'eem*.

7.22 On taking charge of the *Smun'eem*, the CEO will:

- (a) immediately make all reasonable efforts to notify the Parent or Care Provider of the *Smun'eem*;
- (b) investigate the circumstances; and
- (c) take the *Smun'eem* to a safe place or arrange for someone to look after the *Smun'eem*.

7.23 The CEO may request that a Family member of the *Smun'eem* assist the CEO in fulfilling its obligations under section 7.21(b).

7.24 The CEO may also request that a Police Officer accompany and assist the CEO in exercising this authority under s. 7.20.

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- 7.25 The CEO must as soon as possible:
- (a) return the *Smun'eem* to the Parent or Care Provider; or
  - (b) place the *Smun'eem* with a person at the request of the Parent or Care Provider, unless the CEO proceeds under section 7.27.
- 7.26 The CEO may take charge of a *Smun'eem* whether or not all Active Efforts to provide Support Services and Intervention Services have been provided.

### **If a Supervision Order is Necessary**

- 7.27 The CEO may apply to the Court for a Supervision Order that the CEO supervise the care of *Smun'eem* if the CEO has reasonable grounds to believe that:
- (a) the *Smun'eem* needs protection; and
  - (b) a Supervision Order would be necessary to protect the *Smun'eem*.

### **Removal of a *Smun'eem***

- 7.28 Removal of a *Smun'eem* is a last resort and will only occur where the CEO has clear and convincing evidence that a *Smun'eem* needs protection in accordance with section 6.9 and that:
- (a) all Active Efforts to provide support and less disruptive Intervention Services have been exhausted; or
  - (b) a Parent or Care Provider declines to participate in the voluntary processes of this Law, and no other less disruptive measure that is available is adequate to protect the *Smun'eem*; or
  - (c) the *Smun'eem* is under a Continuing Custody Order, in which case the *Smun'eem* will be deemed to be in need of protection and the provisions of sections 12.3 – 12.6 will apply.
- 7.29 The CEO will take the *Smun'eem* from the Parent or Care Provider into temporary non-voluntary care or guardianship.
- 7.30 Transfer from a Director will be deemed a Removal and ss. 7.31 – 7.34 apply.

### **Notification of Removal**

- 7.31 The CEO will make all reasonable efforts to advise, by notice, the Parent or Care Provider of the Removal of the *Smun'eem*, and all necessary information regarding next steps.
- 7.32 The notice must, if practicable, be in writing and must include a statement of the reasons for removing the *Smun'eem*.

### **Care of a *Smun'eem* if *Smun'eem* Removed**

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- 7.33 If a *Smun'eem* is removed under section 7.28, the CEO has care of the *Smun'eem* until:
- (a) the *Smun'eem* is returned by the CEO;
  - (b) the CEO withdraws from a presentation hearing;
  - (c) the Court makes an interim order about the *Smun'eem*; or
  - (d) the *Smun'eem* is returned by the Court.

#### **Returning the *Smun'eem* Before Provincial Court Hearing**

- 7.34 Before a hearing relating to the Removal of a *Smun'eem*, the CEO may return the *Smun'eem* to the Parent apparently entitled to custody if:
- (a) the CEO withdraws from the proceeding;
  - (b) the CEO makes in agreement with the Parent that the CEO considers adequate to protect the *Smun'eem*;
  - (c) the CEO considers the circumstances have changed or has received information so that the *Smun'eem* no longer needs protection; or
  - (d) a less disruptive means of protecting the *Smun'eem* becomes available, including recommendations from the grandparent, *Sul-hween* Committee or the *Smun'eem* Blanketing Committee.

### **8. ADJUDICATION AND DISPUTE RESOLUTION MECHANISMS**

- 8.1 Sections 8.2 to 8.50 only apply to proceedings under this Law if the Regulation establishing the AADRB under section 8.51 is not in force.

#### **PHASE ONE**

##### **BC Provincial Court**

- 8.2 The BC Provincial Court will have jurisdiction to hear a matter arising under this Law, including any disputes relating to the Removal or supervision of a *Smun'eem* pursuant to this Law.
- 8.3 Any Court proceeding will may be as informal as the judge permits and will be civil in nature.
- 8.4 A judge may at any time direct the parties and their lawyers to attend a Case Conference.
- 8.5 The Court may, if in the best interests of a *Smun'eem*, exclude the *Smun'eem* from the courtroom.

- 8.6 The Court may admit any hearsay evidence of the *Smun'eem* it considers reliable, and give any other direction the judge considers appropriate in relation to evidence received from a *Smun'eem*.
- 8.7 The Court may, before making an order that a *Smun'eem* be placed with or returned to a person other than the CEO, consider the person's past conduct towards the *Smun'eem*, and may admit as evidence, any hearsay evidence the Court considers reliable, including a transcript, exhibit or finding of an earlier civil or criminal proceeding.
- 8.8 The Court may shorten, lengthen, or dispense with the requirement that notice of a proceeding, or all proceedings, be served on a party or other person.

### ***Sul-hween* Harmony Restoring Advisory**

- 8.9 Council will, by Regulation, establish a *Sul-hween* Harmony Restoring Advisory.
- 8.10 The mission of the SHRA is to assist Cowichan Tribes, in a manner that recognizes the self-determination, *Snuw'uy'ulh*, culture, traditions and customary practices of the Cowichan people, in the development of their laws and legal processes that will provide fair and equitable justice for all who fall within their jurisdiction. In fulfilling this mission, the SHRA promotes a self-sufficient Cowichan community and strengthens self-determination.
- 8.11 The SHRA will seek the best means to encourage communication among the participants in each particular case. The SHRA will rely on Cowichan culture and customary practices and the wisdom and experience of *Sul-hween*.
- (a) In doing so, it will address those in conflict as whole persons, in order to find the root causes of inappropriate or irresponsible behavior.
  - (b) It focuses on restoration of the family and helping *Smun'eem* to thrive in the community.
  - (c) Ultimately, the SHRA seeks to attain harmony through healing.
- 8.12 The Court will utilize the SHRA in resolving disputes involving *Smun'eem* who have been removed from their Parent or Care Provider pursuant to this Law. In doing so, the SHRA will work with the Court judge and serve as advisors in resolving matters brought before the Court.

### **Consent Order**

- 8.13 The Court may make an order for the custody or supervision of a *Smun'eem* at any time during a proceeding only with the voluntary, informed, and written consent of the CEO, each Parent or Care Provider of the *Smun'eem* and, if the *Smun'eem* is 12 years of age or older, the *Smun'eem*, or may dispense with any consent required if it is in the best interests of a *Smun'eem*.

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## **Protective intervention or Restraining Order**

- 8.14 If the CEO has reasonable grounds to believe that contact between a *Smun'eem* and another person would cause the *Smun'eem* to need protective intervention, the CEO may apply to the Court for a protective intervention or restraining order.
- 8.15 The Court may make an order, including a protective intervention order or restraining order, without a person or party against whom the order is made having been served notice of the application.
- 8.16 At least two days before the date set for hearing the application, the CEO will serve notice of the time, date and place of the hearing on:
- (a) the person against whom the order is sought;
  - (b) the *Smun'eem*, if 12 years of age or over;
  - (c) the Parent of the *Smun'eem*; and
  - (d) if the *Smun'eem* is a member of another First Nation, the First Nation of the *Smun'eem*.
- 8.17 If the Court is satisfied that there are reasonable grounds to believe that contact between the *Smun'eem* and the person named in the application would cause the *Smun'eem* to need protective intervention, the Court may make one or more of the following protective intervention orders:
- (a) that the person be prohibited for a period of up to one year from directly or indirectly contacting or interfering with or trying to contact or interfere with the *Smun'eem* or from entering any place where the *Smun'eem* is located;
  - (b) if the Court believes that the person may not comply with a protective intervention order or restraining order, require that the person:
    - (i) enter into a recognizance, with or without sureties, in an amount the Court considers appropriate;
    - (ii) report to the Court, or to a person named by the Court, for the period of time and at the times and places the Court directs: or
    - (iii) produce relevant specific documents.

## **Supervision Order**

- 8.18 No later than 10 days after the date of applying for a Supervision Order under section 7.27, the CEO must attend for a Presentation Hearing unless the Court is notified that the CEO does not intend to proceed with the application.
- 8.19 At least 7 days before the date set for a Presentation Hearing of an application for a Supervision Order under section 7.27, notice of the date, time and place of the hearing must be served on:

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- (a) the *Smun'eem*, if twelve years of age or over;
- (b) on each Parent;
- (c) if the *Smun'eem* is registered or entitled to be registered as a member of a First Nation, on the designated representative of a First Nation;
- (d) if the *Smun'eem* is a treaty First Nation child, on a designated representative of the treaty First Nation; and
- (e) Indigenous Governing Body.

8.20 At a Presentation Hearing relating to an application for a Supervision Order under section 7.27, the CEO must present to the Court a written report that includes:

- (a) the grounds for making the application that the *Smun'eem* is in need of protection; and
- (b) an interim plan of care for the *Smun'eem*, including the CEO's recommendations about the terms, conditions, and duration to be included in the Supervision Order.

8.21 If the Court is satisfied that there are reasonable grounds to support the CEO's concerns, it may make an interim Supervision Order that the CEO supervise the care of the *Smun'eem*.

#### **If Supervision Order No Longer Protects the *Smun'eem***

8.22 The CEO will, without further order, remove a *Smun'eem* who is the subject of a Supervision Order if:

- (a) the CEO has reasonable grounds to believe that the order no longer protects the *Smun'eem*; or
- (b) the CEO has reasonable grounds to believe that a person has not complied with a term or condition of the order and the CEO is required by that order to remove the *Smun'eem* if the person does not comply with that term or condition.

#### **Presentation Hearing and Orders**

8.23 At a Presentation Hearing relating to the Removal of a *Smun'eem*, the CEO must present to the Court a written report that includes:

- (a) the circumstances that caused the CEO to remove the *Smun'eem*;
- (b) an interim plan of care for the *Smun'eem* which takes into account the Guiding Principles of this Law; and
- (c) information about any Active Efforts and less disruptive measures taken by the CEO before removing the *Smun'eem*.

8.24 At the conclusion of the Presentation Hearing, the Court must make:

- (a) an interim order that the *Smun'eem* be in the custody of the CEO;
- (b) an interim order that the *Smun'eem* be returned to or remain with the parent apparently entitled to custody under the supervision of the CEO;
- (c) an interim order that the *Smun'eem* be placed in the custody of a person other than a parent, with the consent of the other person and under the CEO's supervision; or
- (d) an order that the *Smun'eem* be returned to or remain with the parent apparently entitled to custody.

### **Arranging a Subsequent Hearing**

- 8.25 At the conclusion of a Presentation Hearing, if no consent order is made, Case Conference must be directed at the earliest possible date.
- 8.26 If no consent order is made at the conclusion of a Case Conference, a subsequent hearing may be scheduled to determine if the *Smun'eem* is in need of protection.

### **Notice of Protection Hearing**

- 8.27 At least 10 days before the date set for a protection hearing, notice of the time, date and place of the hearing must be served as follows:
- (a) on the *Smun'eem*, if 12 years of age or over;
  - (b) on each Parent;
  - (c) if the *Smun'eem* is registered or entitled to be registered as a member of a First Nation, on the designated representative of the First Nation;
  - (d) if the *Smun'eem* is a treaty First Nation Child, or a Nisga'a Child, on a designated representative of the treaty First Nation or Nisga'a Nation; and
  - (e) if the *Smun'eem* is registered or entitled to be registered as a member of a First Nation represented by an IGB, on the IGB.
- 8.28 The notice must specify the orders the CEO intends to request and include a copy of any plan of care the CEO intends to present to the Court unless the Parent and any other person entitled to notice agrees to wait until a later date for that information.

### **Parties to Protection Hearing or Other Court Proceeding**

- 8.29 If the following persons appear at the commencement of the protection hearing, they are entitled to be parties at the hearing:
- (a) each Parent of the *Smun'eem*;
  - (b) the CEO;

- (c) if the *Smun'eem* is an Indigenous Child, the Indigenous Governing Body who was served with notice of the hearing;
- (d) if the *Smun'eem* is an Indigenous Child, the designated representative of the First Nation or Indigenous community who was served with notice of the hearing;
- (e) if the *Smun'eem* is a treaty First Nation Child, the designated representative of the treaty First Nation who was served with notice of the hearing;
- (f) a person who has an interim order for custody of the *Smun'eem*; and
- (g) a person who is ordered by the Court to be a party.

### **Protection Hearing**

- 8.30 At a protection hearing, the Court must determine whether the *Smun'eem* needs protection.
- 8.31 If the Court finds that the *Smun'eem* does not need protection, it must, if the *Smun'eem* was removed:
- (a) order the CEO to return the *Smun'eem* as soon as possible to the Parent apparently entitled to custody unless the *Smun'eem* has already been returned; and
  - (b) terminate or cancel any interim Supervision Order; or
  - (c) terminate or cancel any interim order under s. 8.24.
- 8.32 If the Court finds that the *Smun'eem* needs protection, it must:
- (a) consider the plan of care presented by the CEO; and
  - (b) hear any evidence the Court considers necessary to help it determine which order should be made.

### **Orders Made at Protection Hearing**

- 8.33 If the Court finds that the *Smun'eem* needs protection, it must make one of the following orders in the best interests of the *Smun'eem*:
- (a) that the *Smun'eem* be returned to or remain in the custody of the Parent apparently entitled to custody and be under the CEO supervision under a temporary order;
  - (b) that the *Smun'eem* be placed in the care, custody and guardianship of a person other than a Parent with the consent of the other person and under the supervision of the CEO under a temporary order;
  - (c) that the *Smun'eem* remain or be placed in the care, custody and guardianship of the CEO under a temporary order; or

(d) that the *Smun'eem* be placed in the ongoing custody of the CEO.

8.34 Where the CEO has custody of a *Smun'eem* under an interim order, Temporary Custody Order, or Ongoing Custody Order, the CEO has the following rights and responsibilities unless they are limited by the Court:

(a) to consent to health care for the *Smun'eem*;

(b) to make necessary decisions about the *Smun'eem* education; and

(c) to exercise any other rights and to carry out any other responsibilities of a personal Guardian of the *Smun'eem*, except the right to consent to the adoption of the *Smun'eem*.

### **Access Orders**

8.35 At the time an order, or after an order, is made the Parent who had custody when the *Smun'eem* was removed may apply to the Court for access to the *Smun'eem*.

8.36 The provisions regarding notice and parties to a protection hearing will apply to any application for access.

### **Change, Cancel, Extend or Shorten Orders**

8.37 Before a consent order, Supervision Order or Temporary Custody Order expires, the CEO or the person against whom the order was made may apply to the Court to do one or more of the following:

(a) change the order;

(b) cancel the order;

(c) shorten the term of the order; or

(d) extend the term of the order.

8.38 If the circumstances that caused the *Smun'eem* to need protection are not likely to improve within a reasonable time, the CEO may, before the order expires, apply to the Court for an extension of an order and if satisfied that the circumstances that caused the *Smun'eem* to need protection are not likely to improve within a reasonable time, the Court may, in the best interests of the *Smun'eem*, extend the term of the order.

8.39 If circumstances have changed significantly since the order was made, any party may apply to the Court for a change to an order.

(a) If the Court finds that circumstances have changed significantly since the order was made, the Court, in the best interests of the *Smun'eem*, may cancel the order and make no other order or may cancel the order and make any other order provided for under this Law.

- (b) If the Court finds that circumstances have not changed significantly since the order was made, the Court may confirm the order.

### **Ongoing Custody Order**

- 8.40 The CEO may apply for an Ongoing Custody Order when the CEO reasonably believes that the conduct or condition of the Parent is such as to render him or her unable to care for the *Smun'eem* and that such conduct or condition is unlikely to change.
- 8.41 In applying for an Ongoing Custody Order the CEO will consider but is not limited to the following:
  - (a) abuse, neglect or abandonment of the *Smun'eem*;
  - (b) failure to maintain regular contact with the *Smun'eem* under a plan to reunite the *Smun'eem* and Parent;
  - (c) the Parent is unwilling or unable to resume custody of the *Smun'eem*;
  - (d) the identity or location of a Parent of the *Smun'eem* has not been found after a diligent search and is not likely to be found; and
  - (e) the CEO determines that it is best interest of the *Smun'eem*.
- 8.42 The Court may order that the *Smun'eem* be placed in the ongoing custody of the CEO if:
  - (a) all measures to maintain the unity of the Family have been exhausted;
  - (b) the identity or location of a Parent of the *Smun'eem* has not been found after a diligent search and is not likely to be found;
  - (c) the Parent is unable or unwilling to resume custody of the *Smun'eem*;
  - (d) no other Family members are able or willing to assume custody of the *Smun'eem*; or
  - (e) the nature and extent of the harm the *Smun'eem* has suffered or the likelihood that the *Smun'eem* will suffer harm is such that there is little prospect that it would be in the best interests of the *Smun'eem* to be returned to the Parent.

### **Effect of an Ongoing Custody Order**

- 8.43 When an order is made placing a *Smun'eem* in the ongoing custody and guardianship of the CEO, the CEO becomes the Guardian of the *Smun'eem*.
- 8.44 An Ongoing Custody Order:
  - (a) must be made in accordance with the Guiding Principles; and
  - (b) must provide for the *Smun'eem* to have an ongoing relationship with their Parents and Family, if it is in the Best Interests of the *Smun'eem*.

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## **Enforcement of Custody Orders**

- 8.45 If the CEO has care or guardianship of a *Smun'eem* under this Law and the CEO is denied care or custody of the *Smun'eem*, a Court, on application, may order that a Police Officer take charge of the *Smun'eem* and take the *Smun'eem* to the CEO or other person who is entitled to the care or custody of the *Smun'eem* under this Law.
- 8.46 A person must not prevent a Police Officer from enforcing an order made under this Law.

## **Appeal to Supreme Court**

- 8.47 A party may appeal to the Supreme Court of British Columbia from a decision or order of the Provincial Court made under this Law.
- 8.48 The time limit for bringing an appeal under subsection is 30 days, beginning on the day after the order of the Provincial Court is made.
- 8.49 An appeal is brought by:
- (a) filing a notice of appeal in a registry of the Supreme Court; and
  - (b) serving a copy of the notice of appeal on
    - (i) the parties to the proceeding in which the order of the Provincial Court was made, and
    - (ii) the Public Guardian and Trustee, if the *Smun'eem's* property Guardian.
- 8.50 The Supreme Court Civil Rules apply to an appeal under this Part.

## **PHASE TWO**

- 8.51 Council may establish by Regulation an Alternative Adjudication and Dispute Resolution Body for the adjudication of matters and resolution of disputes under this Law.
- 8.52 A Regulation made under section 8.51 must establish:
- (a) the jurisdiction, composition, rights, responsibilities, privileges and powers of the AADRБ;
  - (b) the rules and procedures governing the adjudication of matters and resolution of disputes by the AADRБ;
  - (c) the rules and procedures governing the orderly transition of existing proceedings, including any Court orders, commenced or made under sections 8.2 to 8.50 from the Court to the AADRБ; and
  - (d) the application of sections 8.2 to 8.50, if any, to a matter or proceeding before the AADRБ.

8.53 If Council establishes an AADRБ under section 8.51, sections 8.2 to 8.50 of this Law will cease to apply, except as otherwise specified by Regulation, and any proceedings commenced in the Court under those sections must be resolved, or transferred from the Court to the AADRБ, in accordance with the Regulation made pursuant to section 8.51.



## 9. GOVERNANCE AND JURISDICTION

### Authority and Jurisdiction

- 9.1 This Law is made pursuant to the authority of Cowichan Tribes' inherent jurisdiction and right to self-government as recognized and affirmed by:
- (a) the *Constitution Act, 1982*, s. 35;
  - (b) Articles 3 and 4 of the *United Nations Declaration on the Rights of Indigenous Peoples*;
  - (c) the Federal Act; and
  - (d) the *Child, Family and Community Services Act*, RSBC 1996, c 46.
- 9.2 Cowichan Tribes' inherent jurisdiction includes jurisdiction over any Child and Family Services involving a *Smun'eem* throughout every Province or Territory in Canada.
- 9.3 In the event of a conflict or inconsistency between this Law and a federal or provincial law, this Law will prevail.
- 9.4 The *Canadian Charter of Rights and Freedoms* applies to the Cowichan Tribes in the exercise of jurisdiction in relation to Child and Family Services with due regard for section 25 of the *Canadian Charter of Rights and Freedoms*.
- 9.5 This Law, as amended from time to time has, during the time it is in force, the force of law.

### Application of Law

- 9.6 This Law will apply within the Service Delivery Area. Cowichan Tribes will administer and enforce this Law within the Service Delivery Area.
- 9.7 The Service Delivery Area may be modified by Regulation.
- 9.8 Within the Service Delivery Area, provincial child and family services legislation will only apply to a *Smun'eem* as authorized by the CEO.
- 9.9 The CEO may respond to any Child and Family Service screening involving a *Smun'eem* in the Service Delivery Area.
- 9.10 The CEO may withdraw from any proceeding under this Law, if a *Smun'eem* and their Family relocate to a primary residence outside the Service Delivery Area.
- 9.11 Outside the Service Delivery Area, Council may enter into any agreement they deem necessary to facilitate the involvement of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* in decisions regarding a *Smun'eem* provided that such agreement ensures that Cowichan Tribes *Snuw'uy'ulh* and service delivery principles and standards are considered.

## Role of Council

- 9.12 Cowichan Tribes will act through the Council in exercising its powers and carrying out its duties and functions.
- 9.13 The Council has the following powers and responsibilities in relation to Child and Family Services:
- (a) establishing Laws and Regulations;
  - (b) leading and conducting government-to-government relations with Canada, Provinces and Territories by negotiating and entering into agreements with any level of government in Canada, including any government agency or entity or any other national, regional or local entity, as well as other First Nation, Metis and Inuit nations concerning delivery of Child and Family Services;
  - (c) appointing the *Stsi'elh stuhw'ew't-hw tun Smun'eem* Board of Directors;
  - (d) establishing *Sti' elh tuhw thun smuneem'st* [Honouring Our Sacred Children and Families] the Service Delivery Agency of *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
  - (e) appointing an Independent Representative;
  - (f) delegating authority to any person or class of persons to exercise powers, duties and functions under this Law; and
  - (g) doing such things as may be necessarily incidental to the exercise of jurisdiction over Child and Family Services set out in this Law.
- 9.14 Council may serve as an advocate for families but will not become directly involved or interfere with any case management decisions.
- 9.15 Without limited the generality of subsection 9.13(a), Council may make any Regulations it considers necessary and advisable for purposes under this Law, including:
- (a) for any purpose in relation to which Regulations are provided for in this Law;
  - (b) to prescribe any matter or thing referred to in this Law as prescribed or to be prescribed;
  - (c) to set fees;
  - (d) respecting the form and content of forms, notices, and reports that are required or permitted under this Law;
  - (e) to set penalties;

- (f) to establish Dispute Resolution Mechanisms and procedures for hearing appeals and resolving disputes under this Law;
- (g) to define words and expressions that are used but not defined in this Law; and
- (h) generally for the purpose of giving effect to this Law.

9.16 Without limiting the generality of subsection 9.13(a) or section 9.15 Council may, by Regulation,

- (a) expand or clarify the powers, duties or functions to be exercised or performed by the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (b) impose limits on the powers, duties or functions to be exercised or performed by the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (c) create requirements regarding the eligibility, appointment, terms of service, remuneration, termination, and other matters respecting the Board of Directors;
- (d) create requirements respecting investment by the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (e) create requirements regarding the terms and conditions of agreements entered into by the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (f) create requirements respecting the borrowing of money by the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (g) create requirements respecting indemnities referred to in section 11.30, any terms and conditions of an indemnity, and the circumstances and manner in which an indemnity may be given;
- (h) adopt conflict of interest guidelines, codes of conduct and any other guidelines and policies in respect of Directors, officers and employees of *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
- (i) require *Stsi'elh stuhw'ew't-hw tun Smun'eem* to prepare and provide records, reports and accounts; and
- (j) create requirements generally respecting the operations of *Stsi'elh stuhw'ew't-hw tun Smun'eem* and *tsi' elh tuhw thun smuneem'st*.

9.17 In making Regulations under this Law, Council may delegate a matter to a person and confer a discretion on a person.

## **10. INDEPENDENT REPRESENTATIVE**

10.1 Council may appoint a person as the Independent Representative to provide monitoring, oversight, support, and advocacy for *Smun'eem* and their families respecting the implementation and application of this Law and the provision of Child and Family Services under this Law.

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10.2 Council may make regulations regarding the eligibility, appointment, remuneration, terms of service, termination, functions, duties, general powers, and all other matters ancillary or related to the Independent Representative.

**11. STSI'ELH STUHW'EW'T-HW TUN SMUN'EEM [COWICHAN TRIBES' CHILD AND FAMILY SERVICES AUTHORITY]**

**Establishment of *Stsi'elh stuhw'ew't-hw tun Smun'eem***

11.1 There is established by operation of this Law, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* consisting of the Board of Directors appointed pursuant to section 11.8.

11.2 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* has the capacity and, subject to this Law and any regulation, the rights, powers and privileges of a natural person, including without limitation the power to:

- (a) sue and be sued;
- (b) enter into contracts;
- (c) acquire, hold and dispose of property;
- (d) hold, spend, invest and borrow money, and secure or guarantee the repayment of money borrowed; and
- (e) do other things ancillary to the exercise of its rights, powers and privileges.

11.3 Subject to section 11.4, neither federal nor provincial legislation dealing with not-for-profit organizations shall apply to the *Stsi'elh stuhw'ew't-hw tun Smun'eem*.

11.4 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* may incorporate and register under federal or provincial legislation for the same purposes, and on the same terms, as set out in this Law.

11.5 Unless Council directs otherwise by regulation, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* will make reasonable efforts to maintain its head office on *Tumuhw*.

11.6 The purpose of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* is to oversee the administration and implementation of this Law.

11.7 In furthering its purpose, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* will:

- (a) periodically review the effectiveness of this Law, and recommend possible amendments to Council;
- (b) establish regulations, processes and policies regarding the administration of this Law including:
  - (i) establishing risk management strategies and processes;

- (ii) establishing standards and policies for Cowichan Tribes' Child and Family Services, *Stsi'elh stuhw tu smun'eem*, or other child and family service agencies;
  - (iii) establishing policies and procedures to ensure *Stsi'elh stuhw tu smun'eem* practice compliance and quality assurance for case review and critical incident investigation and processes;
  - (iv) establishing and licensing of care homes and other residential facilities;
  - (v) ensuring the enforcement of this Law; and
  - (vi) creating and managing the human resource complaints processes;
- (c) administer and implement this Law within the Service Delivery Area through delegated authority to *Stsi'elh stuhw tu smun'eem* workers or other Child and Family Service agency workers;
- (d) outside the Service Delivery Area, oversee the administration of agreements with provincial authorities regarding Cowichan Tribes' involvement in all aspects of Child and Family Services, including:
- (i) assessments and investigations;
  - (ii) plans of care and placement decisions;
  - (iii) the provision of preventive services; and
  - (iv) ensuring Cowichan *Snuw'uy'ulh*, service delivery principles and standards are considered;
- (e) collect data reflecting a performance-informed approach, with consideration of the well-being indicators defined in the Institute for Fiscal Studies and Democracy Measuring to Thrive framework;
- (f) appoint Cowichan Tribes designated representatives;
- (g) provide stewardship & effective leadership over Child and Family Services, including by providing progress and fiscal reports to Council and Cowichan Tribes Citizens at least once every year;
- (h) set overall fiscal direction for *Stsi'elh stuhw tu smun'eem*; and
- (i) do everything reasonably necessary, suitable, proper, convenient or incidental to these activities and objectives.

***Stsi'elh stuhw'ew't-hw tun Smun'eem Board of Directors***

- 11.8 Council will, by regulation, appoint a Board of Directors consisting of at least five and no more than nine individuals.
- 11.9 Council will create regulations regarding the eligibility, appointment, terms of service, remuneration, termination, and other matters respecting the Board of Directors.

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- 11.10 In making an appointment to the Board of Directors, Council will have regard to the need to have Directors who, in the aggregate, have the full range of skills, knowledge and experience necessary to effectively lead the *Stsi'elh stuhw'ew't-hw tun Smun'eem* in achieving its purposes.
- 11.11 A Director holds office for a fixed term set out by regulation.
- 11.12 The Board of Directors must:
- (a) consist of a majority of Citizens;
  - (b) include at least one Citizen who is a *Sul-hween*;
  - (c) include at least one Citizen who is a Youth;
  - (d) include a fluent *Hul'q'umi'num* speaker;
  - (e) include gender balance and diversity; and
  - (f) not include any member of Council or *Stsi'elh stuhw tu smun'eem* employees.
- 11.13 For greater certainty, it is the preference that all members of the Board of Directors be Citizens and if not possible, preference will be given to Indigenous applicants over non-Indigenous applicants.
- 11.14 The Board of Directors will designate one of the Directors as chair and may designate other officers and establish committees.

***Stsi'elh stuhw'ew't-hw tun Smun'eem* Board Powers**

- 11.15 The Board of Directors will supervise the management of the business and affairs of the *Stsi'elh stuhw'ew't-hw tun Smun'eem*.
- 11.16 The Board of Directors may make policies governing:
- (a) the business, administration and affairs of the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
  - (b) the calling and conducting of Board of Directors and committee meetings and the conduct of the business of the Board and committees generally;
  - (c) the avoidance and mitigation of conflicts of interest; and
  - (d) practice standards and procedures subject to the principles and requirements of this Law.
- 11.17 The Board of Directors will as soon as practicable after making a policy, provide a copy of the policy to Council.

11.18 Where the Board of Directors does not make a policy under section 11.16 the relevant policies of Cowichan Tribes and Board approved policies of *Stsi'elh stuhw tu smun'eem* will apply.

### **Chief Executive Officer and Employees**

11.19 The Board of Directors will appoint a person as the CEO of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* for the purpose of administering and implementing this Law and carrying out decision-making functions under this Law.

11.20 Reporting to the Board of Directors, the CEO is responsible for the overall management of the day-to-day operations of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* to ensure the purposes of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* are fulfilled in accordance with this Law.

11.21 Subject to any regulations, the CEO may delegate to any person or class of persons any or all powers, duties, or functions of the CEO under this Law. A delegation of the CEO's powers under this section must be in writing and may include any terms or conditions the CEO considers advisable.

11.22 The CEO may engage employees for the purpose of carrying on the business of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* and may determine their conditions of service.

11.23 The CEO will provide reports to the Board of Directors on a quarterly basis, and at any other time upon request, and an annual report to Council.

### **Finance**

11.24 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* will carry out activities and achieve its purposes on a not-for-profit basis.

11.25 The fiscal year of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* shall run from April 1st of each year to March 31st of the following year.

11.26 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* will meet the requirements that apply to "related bodies" pursuant to the Cowichan Tribes *First Nation Financial Administration Law, 2018* including by:

- (a) providing sufficient timely information for the Finance and Audit Committee and Cowichan Tribes to meet their obligations with respect to the *Stsi'elh stuhw'ew't-hw tun Smun'eem* as a related body; and
- (b) meeting the requirements that may, from time to time, apply to the capital projects of the *Stsi'elh stuhw'ew't-hw tun Smun'eem*.

- 11.27 Subject to any limitations or requirements in a BCR passed pursuant to section 9.16, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* may enter into financing agreements and provide security for such agreements.
- 11.28 Council may, by BCR or pursuant to any agreement between Cowichan Tribes and the *Stsi'elh stuhw'ew't-hw tun Smun'eem*, transfer money to the *Stsi'elh stuhw'ew't-hw tun Smun'eem* for the purposes of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* fulfilling its duties and responsibilities.
- 11.29 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* may raise funds by any lawful means and receive funding directly from the federal and provincial governments, and from any other agencies, entities, individuals, or First Nations.

**Indemnity**

- 11.30 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* will, subject to the terms of any BCR, indemnify:
  - (a) a present or former director of the *Stsi'elh stuhw'ew't-hw tun Smun'eem*;
  - (b) a person who acts or has acted at the request of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* or *Stsi'elh stuhw tu smun'eem*;
  - (c) an employee or former employee of the *Stsi'elh stuhw'ew't-hw tun Smun'eem* or *Stsi'elh stuhw tu smun'eem*; and
  - (d) the heirs, estate and trustees of a person referred to in clause (a), (b) or (c), against costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by that person with respect to a civil, criminal or administrative action or proceeding to which that person is made a party by reason of holding such a position, if that person acted honestly, in good faith and with a view to the best interests of *Stsi'elh stuhw tu smun'eem*, and in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, if that person had reasonable grounds for believing that the conduct that is the subject of the action or proceeding was lawful.
- 11.31 The *Stsi'elh stuhw'ew't-hw tun Smun'eem* will not provide indemnities other than those authorized by section 11.30 or provided in accordance with a BCR.

**12. STSI'ELH STUHW TU SMUN'EEM [COWICHAN TRIBES CHILD AND FAMILY SERVICE DELIVERY AGENCY]**

- 12.1 *Stsi'elh stuhw tu smun'eem* is responsible for carrying out delivery of Child and Family Services in accordance with this Law under the direction of the CEO.
- 12.2 Consistent with the principles of *thu'it stuhw tu shqwalawun* [trust], *Stsi'elh stuhw tu smun'eem*, will measure the success of its programs and services using an outcomes-



based approach regarding child safety, child well-being, family well-being and community well-being and will provide an annual report to the CEO.

### **Transition of existing provincial involvement with a *Smun'eem***

- 12.3 Subject to this Law, the regulations and any applicable Coordination Agreement, the CEO will notify a provincial director of the CEO's intent to assume jurisdiction and responsibility for the provision of Child and Family Services with regard to a *Smun'eem* and will request a provincial director to end involvement, supervision, care, custody or guardianship of a *Smun'eem* in accordance with any applicable provincial law.
- 12.4 A request under 12.3 must be made in writing.
- 12.5 If a request is made under 12.3,
- (a) the CEO has the right to any information in the custody or control of the provincial director necessary,
    - (i) immediately upon making the request, to enable the CEO to determine whether the transfer is in the best interest of the *Smun'eem*; and
    - (ii) at any time, to enable the CEO to exercise powers or perform duties or functions under this Law; and
  - (b) subject to any claim of privilege based on a solicitor-client relationship, the provincial director must promptly disclose the information in paragraph 12.5(a)(i) to the CEO.
- 12.6 Where a request is made under section 12.3 and the CEO has determined the transfer is in the best interest of the *Smun'eem*,
- (a) the provincial director and CEO must promptly develop a written transition plan for carrying out the transition process, which must include:
    - (i) the starting date of the transition period;
    - (ii) the powers, duties and functions of the provincial director and the CEO during the transition period;
    - (iii) the processes to be followed in respect of decisions made by the provincial director during the transition period;
    - (iv) the views and preferences of the *Smun'eem* and, if applicable, their Family;
    - (v) the effective date of Cowichan Tribes assuming jurisdiction and responsibility for the provision of services;
    - (vi) any steps to be taken in relation to ongoing proceedings or existing orders in respect of the *Smun'eem*;
    - (vii) the date by which the provincial director must transfer the provincial director's records to the CEO; and

- (viii) any other matters relevant and necessary to facilitate the transition.
- (b) A transition under this section must be carried out in accordance with the transition plan made under subsection 12.6(a).
- (c) On completion of the transition process:
  - (i) the CEO has all the rights, powers, duties, responsibilities and functions of the CEO under this Law and applicable Coordination Agreement including guardianship, custody, and:
    - (a) to consent to health care for the *Smun'eem*;
    - (b) to make necessary decisions about the *Smun'eem* education; and
    - (c) to exercise any other rights and to carry out any other responsibilities of a personal Guardian of the *Smun'eem*, except the right to consent to the adoption of the *Smun'eem*; and
  - (ii) the provincial director ceases to have the rights, powers, duties, responsibilities and functions under provincial law.

## **Enforcement**

- 12.7 Council may by Regulation appoint any person, including a Police Officer, and assign duties for the purpose enforcing this Law.

## **13. COWICHAN TRIBES' ADMINISTRATIVE REVIEW**

- 13.1 Council must designate a person, or persons, as a review authority to conduct administrative reviews.
- 13.2 A person who was involved in the matter under review must not be designated as a review authority for that matter.
- 13.3 Any of the following may, at any time, request an administrative review of any decision, act, or failure to act of the CEO, that relates to a service to a *Smun'eem*, Young Adult, or Family under this Law
- (a) a *Smun'eem*;
  - (b) the Young Adult;
  - (c) a Parent of the *Smun'eem*;
  - (d) the Cowichan designated representative;
  - (e) any person representing the *Smun'eem*, Young Adult or Parent including a Speaker or family spokesperson.
- 13.4 A request for an administrative review:

- (a) must be made to the CEO; and
  - (b) may be made in writing, in person, by telephone or by any other means.
- 13.5 A review authority may decide not to proceed with an administrative review if:
- (a) the review authority considers that the request for review does not relate to a matter mentioned in section 13.3;
  - (b) the *Smun'eem* or Youth, as applicable, who would be the subject of review, or the person who requested the review, does not want to proceed with the review;
  - (c) the CEO and the person who requested the review agree to an alternate mechanism for resolving the matter;
  - (d) the CEO resolves the matter to the satisfaction of the person who requested the review;
  - (e) the matter is before the Court; or
  - (f) the review authority considers that the remedy sought from it would conflict with an order or decision of the Court.
- 13.6 On deciding not to proceed with an administrative review, the review authority must notify the person who requested the review of the decision and the reasons.
- 13.7 A review authority:
- (a) must commence an administrative review as soon as possible after a request is made; and
  - (b) must complete the review within 30 days after the request is made, unless:
    - (i) the review authority decides under section 13.5 not to proceed with the review; or
    - (ii) the review authority and the person who requested the review agree to extend the time limit.
- 13.8 The review authority must make reasonable efforts to determine the views of:
- (a) the *Smun'eem*, if the *Smun'eem* is the subject of the review;
  - (b) the Youth, if the Youth is the subject of the review;
  - (c) the person requesting the administrative review; and
  - (d) the CEO or delegate.
- 13.9 The review authority may seek the views of and information from Family and any person if the review authority believes it necessary to do so in order to make a decision about the review.

- 13.10 In arriving at its decision, a review authority must consider:
- (a) the Guiding Principles of this Law;
  - (b) the policies and procedures for the administration of this Law; and
  - (c) available resources.
- 13.11 On completing the administrative review, the review authority may recommend that the CEO or delegate concerned do anything that could legally have been done in the circumstances under review.
- 13.12 Within seven days of completing the administrative review, the review authority must provide a copy of its decision to:
- (a) the person who requested the review, including a *Smun'eem* or Youth;
    - (i) the *Smun'eem*, if the *Smun'eem* is the subject of the review and will not be provided a copy of the decision under paragraph (a), unless, in the opinion of the review authority, it is not in the best interests of the *Smun'eem* to provide the *Smun'eem* with a copy of the decision;
    - (ii) the Youth, if the Youth is the subject of the review and will not be provided a copy of the decision under paragraph (a),
  - (b) the CEO; and
  - (c) any other person the review authority considers necessary to ensure that the Act is administered in accordance with the Guiding Principles of the Act.
- 13.13 After the CEO becomes aware of the Critical Injury or death of a *Smun'eem*, the CEO must conduct a review of that Critical Injury or death if:
- (a) the *Smun'eem* or the Family of the *Smun'eem* was receiving a service under the Law at the time of, or in the year previous to, the Critical Injury or death of the *Smun'eem*; and
  - (b) in the opinion of the CEO, the service received, or a policy or practice relating to the service received, may have significantly contributed to the Critical Injury or death of the *Smun'eem*.

## 14. INFORMATION AND CONFIDENTIALITY

### Protecting Information

- 14.1 All personal information obtained under this Law is confidential.
- 14.2 A person must not disclose information obtained under this Law unless such disclosure is:
- (a) to the individual to whom the information relates;

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- (b) made with the consent of the individual to whom the information relates;
- (c) necessary to ensure the safety or well-being of a *Smun'eem*;
- (d) necessary to ensure the safety of a person, other than a *Smun'eem*;
- (e) necessary to plan or provide services for a *Smun'eem*;
- (f) required by a Court order;
- (g) necessary to carry out the purposes of this Law;
- (h) to the legal counsel or advocates for the parties to any dispute resolution process; or
- (i) authorized by Council, by Regulation.

### **Obtaining Information**

- 14.3 If *Stsi'elh stuhw'ew't-hw tun Smun'eem* or *Stsi'elh stuhw tu smun'eem* requests personal information that is in the custody or control of a person or public body on the basis that such information is reasonably necessary to ensure the safety and wellbeing of a *Smun'eem*, the custodian of such information must, unless it is subject to a claim of privilege based on a solicitor-client relationship, immediately provide it.
- 14.4 *Stsi'elh stuhw tu smun'eem* or the *Stsi'elh stuhw'ew't-hw tun Smun'eem*, as applicable, will as soon as reasonably possible, inform any individual whose personal information is disclosed pursuant to section 14.3:
- (a) the personal information that was collected;
  - (b) the reason that the personal information was requested; and
  - (c) the protocols in place to ensure that the information remains confidential.
- 14.5 On the request of Council, the *Stsi'elh stuhw'ew't-hw tun Smun'eem* or *Stsi'elh stuhw tu Smun'eem* will provide to Council information, excluding personal information, that is reasonably necessary for Council to review the effectiveness of the Child and Family Services provided pursuant to this Law.

### **Information Obtained under this Law**

- 14.6 A person who contravenes section 14.2 commits an offence.
- 14.7 Sections 14.1 to 14.6 apply despite any federal or provincial law.
- 14.8 A Federal or provincial law is of no force and effect if it:
- (a) requires disclosure of information obtained under this Law in a manner that is inconsistent with section 14.2; or

- (b) prohibits disclosures of information in a manner that is inconsistent with section 14.3.

## **15. GENERAL PROVISIONS**

### **Liability**

- 15.1 No action for damages lies or may be instituted against a person for anything said or done or omitted to be said or done in the exercise or performance or intended exercise or performance of:
  - (a) the person's power, duty or functions under this Law; or
  - (b) a power, duty or function carried out by the person on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Law.
- 15.2 Cowichan Tribes is not liable in negligence for policy decisions made in accordance with this Law.
- 15.3 The *Negligence Act*, RSBC 1996, c 333, applies to all findings of negligence arising from this Law.

### **Role of the Public Guardian and Trustee**

- 15.4 Cowichan Tribes may enter into an agreement with the Public Guardian and Trustee which provides that the Public Guardian and Trustee has the duties and powers with respect to the management of the Child's property and the protection of the Child's legal interests that are given by law to the Public Guardian and Trustee, including the duties and powers given by section 7 of the *Public Guardian and Trustee Act*, RSBC 1996, c 383, and sections 12, 14 and 16 of the *Infants Act*, RSBC 1996, c 223.

### **Infants Act**

- 15.5 The *Infants Act*, RSBC 1996, c 223, will apply to this Law except subsections 51(1) and (2) which will not apply.
- 15.6 If a *Smun'eem* has no Guardian or if the Guardian appointed is dead, refuses or is incompetent at law to act:
  - (a) the CEO will be the personal Guardian of the *Smun'eem*;
  - (b) where Cowichan Tribes has entered into an agreement with the office of the Public Guardian and Trustee the Public Guardian and Trustee will be the property Guardian of the *Smun'eem*; or
  - (c) subsections (1) and (2) both apply, as circumstances require, unless and until a tribunal of competent jurisdiction otherwise orders.

### **Offences**

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- 15.7 This Law incorporates by reference the processes and procedures set out in the *Offence Act*, RSBC 1996, c 338 subject to such modifications as are required for consistency with this Law and other applicable Laws, and the following rules of interpretation:
- (a) without restricting the application of the rules under this section, necessary changes on points of detail may be made to any provision of the *Offence Act* to ensure compliance with the terminology and procedures outlined in this Law and other applicable Laws;
  - (b) for certainty, if this Law modifies a section of the *Offence Act*, and the same section is referenced in additional sections of the *Offence Act* that apply to this Law, the applicable section must be interpreted subject to the modifications provided under this Law; and
  - (c) if a defined term has different meanings under the applicable sections of the *Offence Act* and this Law, the definition for the term provided under this Law prevails.
- 15.8 Section 5 of the *Offence Act* [general offence] does not apply to this Law.
- 15.9 A person who contravenes this Law by doing an act it forbids, or omitting to do an act that it requires, commits an offence under this Law.
- 15.10 Where there is no specified penalty under this Law, the maximum fine or administrative penalty for an offence will not be greater than the general limit for offences under the *Offence Act*.

### **Constitutional Challenge Notice**

- 15.11 If in a cause, matter, or other proceeding:
- (a) the constitutional validity or constitutional applicability of all or any part of this Law is challenged; or
  - (b) an application is made for a constitutional remedy;  
this Law must not be held to be invalid or inapplicable and the remedy must not be granted until after notice of the challenge or application has been served on Council and the Attorney General of Canada and the Attorney General of British Columbia in accordance with the *Constitutional Question Act*, RSBC 1996, c 68.
  - (c) The BC *Constitutional Question Act* will apply to any cause, matter or proceeding under subsection (a).
  - (d) Any notice given to Council under subsection (a) must be given in the same manner and have the same content as a notice to the Attorneys General of Canada and British Columbia under the *Constitutional Question Act*.

### **Enactment and Ratification**

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- 15.12 This Law will be considered approved by a ratification vote where a majority of the participating Eligible Voters cast a vote in favour of the matter.
- 15.13 An independent person must be appointed to oversee and verify the results of any ratification vote.
- 15.14 This Law, including amendments, will come into force and have the force of law on the day set by a valid BCR which will be published on the Cowichan Tribes website and newsletter.
- 15.15 An official copy of this Law will be maintained at the Cowichan Tribes Administration office and will be available to the public to review.
- 15.16 A copy of this Law and any subsequent amendments will be delivered to the appropriate federal and provincial ministers.

### **Review and Amendment**

- 15.17 Council may, by regulation, make amendments to this Law that do not change its substance, which may include, but are not limited to the following:
- (a) corrections to clerical, grammatical or typographical errors;
  - (b) translations to the *Hul'q'umi'num'* language;
  - (c) minor improvements to the language of the Law that bring out more clearly the intent of Cowichan Tribes without changing the substance of any provision;
  - (d) changes as may be required to reconcile seemingly inconsistent provisions;
  - (e) amendments to reference any relevant new or amended Cowichan Laws; or
  - (f) amendments ordered by any Court of competent jurisdiction.
- 15.18 Subject to section 15.19 and without limiting Council's authority to require additional steps, Council may make substantive amendments to this Law if the following steps have been followed:
- (a) Council approves the proposed amendments in principle at a duly convened meeting of Council;
  - (b) Council makes the wording of the proposed amendments publicly available for Citizens to review;
  - (c) Council consults with Citizens about the proposed amendments by holding a minimum of two community meetings over a period of at least three months;
  - (d) Council finalizes the wording of the proposed amendments in response to the consultation with Citizens under subsection (c) and the proposed amendments receive at least one reading in a duly convened meeting of Council; and



- (e) Council adopts the amendments by BCR at a duly convened meeting of Council.
- 15.19 Community approval by a ratification vote will be required for the following:
- (a) any substantive amendment to this Law that may reduce the scope of Cowichan Tribes' jurisdiction over Child and Family Services; and
  - (b) any other matter that Council by regulation declares to be subject to this section.
- 15.20 Every five years after the day on which this Law comes into force, *Stsi'elh stuhw'ew't-hw tun Smun'eem* must undertake a review of the provisions, operations, and effects of this Law and submit a report to Council setting out their analysis, conclusions, and recommendations.
- 15.21 Council must cause the report submitted under section 15.20 to be tabled at the next annual general meeting after the day on which the report was completed.