



COWICHAN TRIBES'
CHILD and FAMILY WELLNESS LAW

May 2023 Consultation Draft for Discussion – Confidential and Not for Distribution



COWICHAN TRIBES
Child and Family Wellness Legislation Project

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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 Elders

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

'Iyusstuhw 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 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 law, our *snuw'uyulh*. 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 original ancestors. Our *snuw'uyulh* 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.

Cowichan Tribes children are sacred, and their wellness and safety are of the upmost importance to Cowichan Tribes' families, communities and people;

It is the inherent right of Cowichan Tribes children 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 children;

This inherent right to nurture, care and provide for, and protect for Cowichan Tribes children and families flows from Cowichan laws and legal practices, and reflects the cultural values and teachings of our *snuw'uyulh*, as held and understood by Cowichan Tribes families;

The relationship and bond between a Cowichan Tribes family and a Cowichan Tribes child 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 Cowichan Tribes' children, we must also nurture and support Cowichan Tribes' families and communities;

This law, and its accompanying policies, are developed from our *snuw'uyulh*, and reflect the culture, values, beliefs, and customary practices of the Cowichan Tribes' people.

Kinship is a foundational legal principle of our *snuw'uyulh*. Cowichan laws, responsibilities, traditions and practices are all centered around kinship relations, which recognize and emphasize the central place of family in our *snuw'uyulh* 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 Tribes' 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 elders, 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 Cowichan Tribes, its communities, families and children, and maintains that Cowichan Tribes is best positioned to remedy this harm, and begin the long and difficult

process of bringing healing to the nation, communities, families, and children 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;

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 Tribes people, enacts as follows:

PART ONE

Title and Interpretation

TITLE

1. This Law will be known as the *Cowichan Tribes' Child and Family Wellness Law*.

INTERPRETATION

2. 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.
3. 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.
4. "Includes" and "including" are not intended to be limiting.
5. The word "or" is used in its inclusive sense, meaning A or B, or both A and B.
6. The word "and" is used in its joint sense, meaning A and B, but not either alone.
7. 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

8. In this Law:

"active efforts" means more than reasonable efforts, and requires thorough, careful and culturally appropriate efforts which are more tangible than a passive attempt.

"BCR" means a validly passed Band Council Resolution at a duly convened Chief and Council meeting.

"care" when used in relation to the care of a child by a worker or another person, means the holistic care, including but not limited to physical care, emotional care, cultural care and control of the child.

“care provider” means a person with whom a child is placed by a worker and who, by agreement with Cowichan Tribes or Lalum’utul’ Smun’eem, is authorized to carry out the rights and responsibilities, under the agreement, of the worker.

“care giver” means a person other than the child’s parent, who has primary responsibility for providing the day-to-day care of a child, including in accordance with the customs or traditions of Cowichan Tribes community or people.

“Child” means a person who is 18 years of age or younger and is registered or entitled to be registered under Cowichan Tribes *Shtunni’s tu Hwulmuhw* (Citizenship Code).

“child and family services” means means services to support children and families, including support services, early intervention services and child protection services.

“child in care” means a child who is in the custody, care or guardianship of Cowichan Tribes.

“critical injury” means an injury to a child that may: (a) result in the child’s death, or (b) cause serious or long-term impairment of the child’s health.

“Coordination Agreement” means an agreement referred to a subsection 2(2) of *An Act respecting First Nations, Inuit, Métis children, youth and families*, SC 2019, c.24.

“court” means the Provincial Court except when this Law provides otherwise

“custody” includes care and guardianship of a child.

“customary adoption” means the process whereby an individual assumes care and responsibility for a Child according to Cowichan Tribes customary law and practices.

“dwelling” means all or part of any premises, vehicle or vessel that is kept or occupied as a permanent or temporary residence

“eligible voters” means for the purpose of voting in respect of child and family service matters under this Law, a member who has obtained the age of 18 on or before the day of the vote.

“extended family member” means those family members recognized by the customs and traditions of the Cowichan Tribes community as being of sufficient relation to care for a child.

“family” means Child, siblings, mother, father, stepparents and extended family members, whether by blood, cultural adoption, custom or marriage, or a person considered to be a close relative to the family

“Federal Act” means the *Act respecting First Nations, Inuit and Metis children, youth and families*, SC 2019, c 24.

“guardian” means a person appointed to act as the personal guardian or property guardian or both of a child and includes all the rights, duties and responsibilities of a parent.

“health care” means anything that is done for a therapeutic, preventive, palliative, diagnostic, cosmetic or other health related purpose, and includes a course of health care

“**Cowichan Governing Body**” means an Indigenous Governing Body as defined in the Federal Act, and for the purposes of this Law means Cowichan Tribes Chief and Council 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.

“intervention services” means all programs and service prior to the transfer of guardianship of a child to Cowichan Tribes.

“Lalum’utul’ Smun’eem” means the Cowichan Tribes’ Child and Family Services agency.

“**Lalum’utul’ Smun’eem worker**” means the Lalum’utul’ Smun’eem worker with delegated authority under this Law.

“Law” means **Cowichan Tribes’ Child and Family Wellness Law** and any regulations passed under it and any subsequent amendments.

“ongoing custody order” means placing a child in the ongoing guardianship, care and custody of Cowichan Tribes.

“parent” means:

- (1) the mother and father or a stepmother or stepfather as the case may be, of a child or youth,
- (2) a person to whom guardianship or custody of a child has been granted by a court of competent jurisdiction or by an agreement,
- (3) a person who has been recognized as the parent by custom, and
- (4) does not include a care provider, prospective adoptive parent or Lalum’utul’ Smun’eem worker

“plan of care” means a plan relating to a child contains the information required and prepared in accordance with Lalum’utul’ Smun’eem policy.

“police officer” means a person who has the authority to act

- (1) under the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10; or
- (2) under the *Police Act*, RSBC 1996, c 367.

“**post majority care**” means **holistic services that promote and support positive outcomes for youth formerly in care.**

“prenatal services” means services provided to an expectant person.

“prospective adoptive parent” means a person with whom a child is placed for adoption and who, by agreement with a worker, is authorized to carry out the rights and responsibilities, under the agreement, of the Lalum’utul’ Smun’eem worker

“protective intervention order” means an order made when a child needs to be protected from someone that would cause the child to need protective intervention.

“remove” means to take a child into the care, custody, or guardianship of Cowichan Tribes.

“residential service” means accommodation and associated supervision provided for a child in foster care or other place away from the home of the child’s parent

“Service Delivery Area” means the geographic area designated by BCR within which the Cowichan Governing Body will administer and implement this law.

“*snuw’uyulh*” means a set of teachings, including the traditional beliefs, customary practices and laws of Cowichan Tribes

“supervision order” means an order made requiring a worker to supervise a child’s care, and includes any extension of or change to that order.

“temporary custody order” means an order made where a child is placed for a specified period in the custody of a worker or another person, and includes any extension or change to that order.

“verifier” means an independent person appointed in accordance with section 235 of this Law.

“youth” means a person who is 19 years of age or over but is under 27 years of age.

PART TWO

Purpose and Guiding Principles

PURPOSE

9. The purpose of this Law is to
- (1) 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*;
 - (2) set out principles and standards, applicable on a national level, to the provision of child and family services in relation to Cowichan Tribes children;
 - (3) facilitate the return of Cowichan Tribes children to the jurisdiction of Cowichan Tribes, and the return to their Cowichan Tribes family and community; and
 - (4) 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.

10. 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

11. This Law is to be interpreted and administered in accordance with our *snuw'uyulh*, including the following guiding principles which apply to all Child and family service matters involving a Child and their family.

Principle – all my relations (importance of knowing who you are)

12. This Law is to be interpreted and administered in accordance with the principle of all my relations as reflected in the following concepts:
- (1) Cowichan Tribes identity is essential to the well-being of a Child, a Cowichan Tribes family and the Cowichan Tribes community;
 - (2) a Child 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;
 - (3) a Child's best interests are often promoted when a Cowichan Tribes child is made aware of and provided with teachings and knowledge regarding who they are, who their relations are, their histories, their customary rights, their *stul'nup* (traditional territory) and their community;
 - (4) grandparents, and other family members, play an integral role in passing down knowledge relating to identity;
 - (5) a Cowichan Tribes child's best interests are often promoted when a Cowichan Tribes child resides with members of their family and in their traditional territory.

Principle – 'ts'lh'a'amtim' (Family – ensuring our connections are strong and resilient)

13. This Law is to be interpreted and administered in accordance with the principle of 'ts'lh'a'amtim' as reflected in the following concepts:
- (1) *Quw'utsun* (Cowichan Tribes) *shhw'a'luqw'a'* (families) extend beyond the immediate family to the child's *sulsi'lu* (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 child;
 - (2) whereas a child's *shhwuw'wuli* (parents) have direct responsibility for the care of the child, the *sulsi'lu* (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'uyulh*, 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);

- (3) a Child’s best interests are often promoted when a child resides with members of their family, and when those kinship relations are actively maintained for the benefit of the child, the family and the community; and
- (4) all family members have an important role to play in the life of a Cowichan Tribes child and those roles and responsibilities should be considered in decision-making about a Cowichan Tribes child, as long as it is within the child’s best interests.

Principle – *mukw’ tu shhw’a’luqw’a’ ’o’ tth’ele’s tu shhwuli* (family is the heart of life)

14. This Law is to be interpreted and administered in accordance with the principle of *mukw’ tu shhw’a’luqw’a’ ’o’ tth’ele’s tu shhwuli*, as reflected in the following concepts:

- (1) Our *snuw’uyulh* teaches that family is the heart of life;
- (2) It is the responsibility of every Cowichan Tribes community member to ensure the safety and well-being of Cowichan Tribes children;
- (3) Family has the primary responsibility to care for a Cowichan Tribes child;
- (4) A family-centered practice is in the best interest of a Child; and
- (5) We must all work together in a respectful and loving way to ensure the safety and well-being of a Cowichan Tribes child.

Principle – *nu stl’i ch* (love)

15. This Law is to be interpreted and administered in accordance with the principle of *nu stl’i ch* as reflected in the following concepts:

- (1) love and compassion are important foundations in family and community relationships;
- (2) a child’s best interests are often promoted when the child feels that they and their family members are treated with love and compassion; and
- (3) we recognize that as a result 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.

Principle – *si’emstuhw* (respect)

16. This Law is to be interpreted and administered in accordance with the principle of *si’emstuhw* as reflected in the following concepts:

- (1) every person is important to the health and well-being of our community, and as such, every person deserves to be treated with respect;
- (2) 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;
- (3) in respecting all things, we respect the Creator;

- (4) 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
- (5) a child's best interests are often promoted when the child feels that they, and all their relations, are treated with respect.

Principle – *hw'uywulh* (sharing/support)

17. This Law is to be interpreted and administered in accordance with the principle of *hw'uywulh* as reflected in the following concepts:

- (1) 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;
- (2) 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;
- (3) 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;
- (4) a child's best interests are often promoted when the community works to actively support their family, and in turn, enable their family to their child.

Principle – *thu'it* (trust)

18. This Law is to be interpreted and administered in accordance with the principle of *thu'it* as reflected in the following concepts:

- (1) a child must be able to exercise their rights under this Act, 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;
- (2) a child's family member must be able to exercise their rights under this Act, 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;
- (3) both a child and a child's family member have a right to appoint a speaker, or another trusted helper or advocate, to help ensure their ability to exercise their rights.

Principle – *xe xe* (sacred protection for people in vulnerable circumstances)

19. This Law is to be interpreted and administered in accordance with the principle of *xe xe* as reflected in the following concepts:

- (1) teachings about the importance of protection are implicit in our *snuw'uyulh*;
- (2) 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;
- (3) these teachings are never more pronounced than when an individual or family stands in a position of danger, or when an individual or family is in need of spiritual help, because of their personal or familial circumstances;
- (4) everyone owes every child an obligation to protect them when the child is in a potentially harmful circumstance;
- (5) by protecting a child's family, we in turn, protect the child.

Principle – *nuts'amaat shqwaluwun* (One Mind, One Heart)

20. This Law is to be interpreted and administered in accordance with the principle of collaboration as reflected in the following concepts:
- (1) our *snuw'uyulh* teaches us that working together to make a decision is just as important as the decision itself;
 - (2) a process of collaboration helps to build sustainable outcomes and sustainable relationships;
 - (3) collaboration processes build connections and develops the strength of our families and communities;
 - (4) collaboration processes enable all individuals to participate, and helps participants to work past divisive conflicts and rebuild their connections and commitments to each other;
 - (5) collaboration processes must be considered in decision-making under this Act.

RIGHTS OF A CHILD

21. A Child enjoys all legal rights and privileges as other children, including but not limited to the rights deriving from our *snuw'uyulh*, the *Canadian Human Rights Act*, RSC 1985, c H-6, the *United Nations Declaration on the Rights of the Child*, and *Convention on the Rights of the Child*.
22. Cowichan Tribes will establish processes and mechanisms to ensure that Children are able to assert and exercise effectively their rights and interests under this Act. These processes and mechanisms will ensure that:
- (1) Children receive teachings and knowledge regarding their rights and interests under the Act, including the Guiding Principles, Minimum Standards and Dispute Resolution Mechanisms;
 - (2) Children can express their views and preferences, directly or through a trusted speaker or advocate, about decisions that directly affect them; and

- (3) Children are enabled, either directly or through a trusted speaker or advocate, to seek a review of decisions that directly affect them.

Jordan's Principle

23. All children have the right to access health care, education, social services, and ceremonial and cultural services without discrimination.
24. Lalum'utul' Smun'eem is an advocate for the rights of every child to health care, education and social services, and ceremonial and cultural services, and may assist children and families with accessing Jordan's Principle services and other relevant services.
25. Nothing in this Law prevents a child from accessing Jordan's Principle services outside of those services provided by, or applied for, the agency.

PART THREE

Governance and Jurisdiction

AUTHORITY AND JURISDICTION

Affirmation

26. Cowichan Tribes asserts and exercises its inherent jurisdiction and right to self- government with respect to child and family services through this Act, regulations and policies throughout every Province or Territory in Canada, over any child and family services proceeding involving a Cowichan Tribes child.
27. The *Constitution Act, 1982* s. 35 recognizes and affirms existing aboriginal rights.
28. The *United Nations Declaration on the Rights of Indigenous Peoples* ("UNDRIP") recognizes the right of Indigenous peoples to self-determination under Articles 3 and 4.
29. The Federal Act recognizes the inherent right to self-government as recognized and affirmed by s. 35 of the *Constitution Act, 1982*, in relation to child and family services.

Paramountcy

30. In the event of a conflict or inconsistency between this Law and the Federal law or provincial law, this Law will prevail.

Canadian Charter of Rights and Freedoms

31. The *Canadian Charter of Rights and Freedoms* applies to the Cowichan Governing Body in the exercise of jurisdiction in relation to child and family services with due regard for section 25.

Force of law

32. This Law as amended from time to time has, during the time it is in force, the force of law.

APPLICATION OF LAW

33. Cowichan Governing Body will take a phased in approach to the exercise of jurisdiction and implementation of this law. The initial service delivery area will include all of Vancouver Island and the Gulf Islands.

Within the Service Delivery Area

34. Within the Service Delivery Area, Cowichan Governing Body will administer and implement this law through delegated authority to Lalum'utul' Smun'eem Workers or other child and family service agencies.
35. Within the Service Delivery Area, this Law will apply to all Children, and provincial child and family services law will only apply as agreed by Cowichan Governing Body.

Outside the Service Delivery Area

36. Outside the Service Delivery Area, provincial child and family services law will apply to Children and families until such time as Cowichan Governing Body asserts jurisdiction.
37. Subject to the s. 92.1 Agreement, outside the Service Delivery Area, Cowichan Governing Body will work with provincial authorities to reach agreements regarding Lalum'utul' Smun'eem involvement in conducting assessments, investigations, developing plans of care, planning for needs of the child and placement decisions and the provision of preventive services, including ensuring Cowichan Tribes *snuw'uyulh* and service delivery principles and standards are considered.

LEGAL STATUS AND CAPACITY

Legal Status

38. Cowichan Tribes is a legal entity with the rights, powers and privileges of a natural person, which includes the capacity to:
- (1) enter into agreements and contracts with any person, government or organization;
 - (2) acquire, hold or dispose of property and any interests therein;
 - (3) sue or be sued and to act on its behalf in legal proceedings
 - (4) hold, spend, invest or borrow money, and secure or guarantee the repayment of money borrowed; and
 - (5) do other things ancillary to the exercise of its rights, powers and privileges.

Legal Capacity

39. Cowichan Tribes has the legal capacity to govern itself in accordance with this Law and the Federal Act.

- 40.** Cowichan Tribes may make laws, or do such other things as may be necessarily incidental to the exercise of jurisdiction over child and family services set out in this Law and the Federal Act including:
- (1) enact, administer and enforce laws;
 - (2) provide for dispute resolution mechanisms including administrative and quasi-judicial decision bodies in relation to child and family services, including but not limited to:
 - (1) authorizing the provincial court to resolve disputes in accordance with the Cowichan Tribes' law,
 - (2) establishing a Cowichan Tribes' court or other dispute resolution bodies,
 - (3) developing rules of procedure, and
 - (4) providing for review and appeal processes
 - (3) provide for the immunity from civil liability of employees, officers or elected officials of the government of Cowichan Tribes and its institutions.

COWICHAN TRIBES' INDIGENOUS GOVERNING BODY

- 41.** Cowichan Tribes will act through the Cowichan Governing Body in exercising its powers and carrying out its duties and functions.
- 42.** The Cowichan Governing Body has the following powers and responsibilities in relation to child and family services;
- (1) establishing the Cowichan Tribe's Child and Family Service Wellness Law, regulations and policies;
 - (2) 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;
 - (3) setting standards to guide the child and family services;
 - (4) setting overall fiscal direction for child and family services;
 - (5) establishing a Board of Directors over child and family services;
 - (6) establishing and supporting the service delivery agency;
 - (7) delegating authority to any person or class of persons to exercise powers, duties and functions under this Act;
 - (8) appointing Cowichan Tribes Designated Representatives;

(9) providing stewardship & effective leadership over child and family services, including providing annual progress and fiscal reports to the Cowichan Tribes citizens, and;

(10) Cowichan Governing Body may serve as an advocate for families, but will not become directly involved or interfere with any case management decisions.

COWICHAN TRIBES' CHILD AND FAMILY SERVICES BOARD OF DIRECTORS

43. Cowichan Tribes Governing Body will by BCR establish a Board of Directors.
44. The Board will consist of nine (9) Members appointed by BCR.
45. The Board members will include gender balance of 3 elders, 4 community citizens, 2 youth, and be selected by a selection committee.
46. The Board will designate one of the Directors as Chairperson.
47. The Board will establish and operate in accordance with the board policies.
48. A Director holds office for a fixed term set out by a BCR appointing the Director.
49. Board succession planning, as outlined in the Board of Directors Policy, details how a Director may cease to hold office or be replaced.
50. The Board of Directors will be responsible to act as the oversight body for Lalum'utul' Smun'eem and abstain from involvement or interference with any case management decisions.
51. As the oversight body, the Board of Directors will ensure implementation of this Law and make **decisions and recommendations** to the Cowichan Governing Body and Lalum'utul' Smun'eem Executive Director for the following:
 - (1) risk management strategies and processes;
 - (2) Cowichan Tribes child and family services standards development;
 - (3) Cowichan Tribes child and family services policy development;
 - (4) establishing and licensing care homes and other residential facilities;
 - (5) amendments to Cowichan Tribes Child and Family Wellness law;
 - (6) Cowichan Tribes agency practice compliance, quality assurance, case review and critical injury investigation and processes;
 - (7) enforcement of the Cowichan Tribes Child and Family Wellness law;
 - (8) complaints processes management;
 - (9) data collection reflecting a performance-informed approach, with consideration of the well-being indicators defined in the Institute for Fiscal Studies and Democracy ("IFSD") Measuring to Thrive framework;

- (10) community reports and engagement;
- (11) cultural safety and competence;
- (12) fiscal/ budget recommendations;
- (13) human resources and staff training;
- (14) program and service delivery model development and revision; and
- (15) Nation-to-Nation Protocols.

DUTY OF CARE

52. For greater certainty, this law sets out the legal obligations owed to a Child, in accordance with our *snuw'uyulh*.

COWICHAN TRIBES' CHILD AND FAMILY SERVICES

Lalum'utul' Smun'eem

53. Lalum'utul' Smun'eem will be the service delivery agency of Cowichan Tribes, responsible for delivery child and family services for Children.
54. Subject to this Act, the Cowichan Governing Body may pass BCR that:
- (1) Expand or clarify the responsibilities, duties or functions to be exercised or performed by Lalum'utul' Smun'eem where such BCR respects the best interests of the Child; or
 - (2) Impose limits on the responsibilities, duties or functions to be exercised or performed by Lalum'utul' Smun'eem where such BCR respects the best interests of the Child.

Lalum'utul' Smun'eem Funding

55. Cowichan Governing Body may transfer money to Lalum'utul' Smun'eem for the purposes of the Lalum'utul' Smun'eem objectives;
56. Lalum'utul' Smun'eem may also receive funding directly from the federal government or provincial governments;
57. Cowichan Governing Body may also receive funding, in accordance with Cowichan Tribes *Financial Administration Law*, from any other agencies, entities, individuals or Indigenous organizations.

Borrowing and Guarantees

58. Lalum'utul' Smun'eem will not borrow money except in accordance with a BCR or Cowichan Tribes' *Financial Administration Law*.
59. Lalum'utul' Smun'eem will not give guarantees.

Indemnification

60. The Cowichan Governing Body will, subject to the terms of any Cowichan Tribes' BCR, indemnify:
- (1) A person who has acted or acts at the request of Lalum'utul' Smun'eem, unless that person has acted with gross negligence;
 - (2) An employee or former employee of Lalum'utul' Smun'eem, unless that employee has acted with gross negligence; and
 - (3) The Cowichan Governing Body will not provide indemnities other than those authorized by subsections 1 and 2.

Lalum'utul' Smun'eem Executive Director

61. Cowichan Governing Body/Board will hire a person to act as the Executive Director who will be responsible to ensure the purposes of this Act, and the day-to-day business of Lalum'utul' Smun'eem are conducted in a satisfactory manner.
62. Cowichan Governing Body will delegate to the Executive Director, the authority to make case management decisions and to delegate to any person or class of persons all powers, duties and functions under this Act.
63. The Executive Director reports to the Cowichan Tribes Chief Administration Officer ("CAO") pursuant to Cowichan Tribes' policy.
64. The Executive Director will provide reports to the Board of Directors on a quarterly basis, or upon request, and an annual report to the Citizens.
65. The Executive Director and Cowichan Tribes Human Resources will hire employees for the purposes of carrying on the day-to-day business of Lalum'utul' Smun'eem and may determine their conditions of service.
66. The employees will adhere to all Cowichan Tribes and Lalum'utul' Smun'eem policies, including the Code of Conduct and Human Resource Policy.

Confidentiality

67. Information about children and their parents and relatives, foster homes, legal custodians, legal guardians, and adoptive homes obtained pursuant to this legislation may only be used:
- (1) as needed to carry out the purposes of this legislation; or
 - (2) for a related criminal or child protection proceeding.
68. Confidential information under this Law includes all aspects of the intervention, investigation, case management, and court proceedings conducted under this Law, including but not limited to:
- (1) allegations that a child is in need of protection;

- (2) identification of the needs of the family and child and the contents of the child protection and family plans;
 - (3) the treatment being provided to the child and family;
 - (4) the child’s health care status and needs;
 - (5) the identity and address of the child’s caretaker;
 - (6) the physical location of the child;
 - (7) the qualifications of the persons proposed to be the caretakers of the children;
 - (8) payments being provided to caretakers for their care of children; and
 - (9) the results of background checks conducted pursuant to this legislation.
69. Information designated as confidential under this Law may only be provided to:
- (1) the Cowichan Tribes and Lalum’utul’ Smun’eem authorized persons;
 - (2) the legal counsel for the parties to the proceeding;
 - (3) the guardian ad litem;
 - (4) police officers; and
 - (5) other persons and entities as provided under this Law.
70. All persons who are allowed access to confidential information about a child or the child’s family pursuant to this legislation will maintain the confidentiality of that information. Any person who violates a duty of confidentiality established under this legislation will be guilty of an offense. If the person is an employee of Cowichan Tribes, the person is additionally subject to employee discipline, in accordance with the Cowichan Tribes Human Resource Policy.

Accountability and Assessment

71. Consistent with the principles of *thi’ut* (trust), Lalum’utul’ Smun’eem will measure and provide an annual report on the success of its child and family programs and services using an outcomes-based approach regarding child safety, child well-being, family well-being and community well-being.

INTERGOVERNMENTAL RELATIONS

Lalum’utul’ Smun’eem Transition from a Delegated Indigenous Authority to a Cowichan Authority

72. Lalum’utul’ Smun’eem will cease to be a provincial delegated agency and transition to being a Cowichan Tribes child and family service delivery agency on the day established by Cowichan Governing Body through a BCR.

73. Lalum'utul' Smun'eem will continue to retain a core number of existing provincial delegated Directors to assist in the transition as necessary.
74. Lalum'utul' Smun'eem existing Directors will transition to being Cowichan Tribes Lalum'utul' Smun'eem Workers and will be delegated under this law.
75. Lalum'utul' Smun'eem will be responsible to facilitate the orderly transfer of existing MCFD files in relation to Children within the Service Delivery Area to Cowichan Tribes jurisdiction, including the provisions of the Cowichan Tribes Coordination Agreement.
76. Cowichan Governing Body will provide the Director written request that the Director withdraw from any file or proceeding regarding a Child.
77. In accordance with the Coordination Agreement, Cowichan Governing Body will request that the Director transfer of all relevant information regarding a Child for which the Director withdraws within 7 days of any such request.

Families Where Two Or More Indigenous Nations' Child and Family Acts Apply

78. Where a Child and family belong to one or more Indigenous nations who have a child and family services law, Cowichan Governing Body may attempt to engage in discussions with the other Indigenous nation in order to reach agreement on which law, or parts thereof, will apply to the Child.
79. Cowichan Governing Body and Lalum'utul' Smun'eem may enter into protocol agreements with other Indigenous nations, or service delivery agencies, to determine how nations will cooperate in operational and working relationship matters.
80. Where a determination is to be made regarding a Child's "stronger ties" to an Indigenous nation or community, Cowichan Governing Body, another Indigenous governing body, a service provider, or court will prioritize consideration of the guiding principles set out in this Act, including but not limited to best interests of the child.

ENFORCEMENT

81. Cowichan Tribes has jurisdiction to appoint and assign duties to Cowichan Tribes officials for the enforcement of this law.
82. The RCMP, or other police force, will render such services as are necessary for enforcement of orders, and requests that a police officer accompany and assist the Lalum'utul' Smun'eem Worker in exercising the authority established by this law, when such services are appropriate for the effective and efficient delivery of policing services in the province.

PART FOUR

Minimum Standards and Collaborative Decision Making

83. This Law is to be interpreted and administered in accordance with our *snuw'uyulh*, including the following standards and collaborative decision-making processes which apply to all Child and family service matters involving a Child and their family.

MINIMUM STANDARDS

Best Interests of the Child

84. This Law is to be interpreted and administered in accordance with the Best Interests of the Child, in particular:
85. The best interests of the Cowichan Tribes child must be a primary consideration in the making of any decisions or the taking of actions in the context of the provision of child and family services in relation to a Cowichan Tribes child and, in the case of decisions or actions related to the removal of a child, the best interests of the child must be the paramount consideration.
86. When determining what is in the best interests of the Cowichan Tribes child, a holistic approach must be taken which takes into consideration both the present and future well-being of the Cowichan Tribes child.
87. When determining the best interests of the child, the primary consideration must be given to the child's physical, emotional and psychological safety, security and well-being and the principles set out in this Law which reflect our *smuw'uyulh* and recognize that ongoing and healthy relationships with family, community, *st'ulnup* (our land/territory) and knowledge of the child's histories, customary rights and culture greatly impacts the child's physical, emotional and psychological safety, security and well-being, both now and in the future.

Determining the Best Interests of the Child

88. To determine the Bests Interests of a Child, all factors related to the circumstances of the child and their family must be considered, including:
 - (1) the child's right to know their identity, including but not limited to their ancestral rights, family histories and family teachings;
 - (2) the child's right to have access to and the opportunity to learn the Hul'qumi'num language;
 - (3) the child's right to have access, under the direction of their family, to ceremonies and protocols that enable them to exercise their sacred ancestral rights;
 - (4) the child's needs, given the child's age and stage of development, such as the child's need to feel loved and secure;
 - (5) the importance of maintaining strong and positive kinship relations with individuals the child considers family;
 - (6) the importance to the child of preserving the child's cultural identity and connections to the language, customary practices, and territory of the Cowichan Tribes people;
 - (7) the child's views and preferences, giving due weight to the child's age and maturity. Active efforts will be made to enable a child to articulate their views and preferences in a manner that is culturally acceptable, taking into consideration mental, physical and psychological capacity of the child;

- (8) any plans for the child’s care, including care in accordance with Cowichan Tribes customary caregiving practices;
- (9) any family violence and its impact on the child, including whether the child is directly or indirectly exposed to the family violence as well as the physical, emotional and psychological harm or risk of harm to the child; and
- (10) any civil or criminal proceeding, order, condition, or measure that is relevant to the current safety, security and well-being of the child.

Substantive Equality

- 89.** This Law is to be interpreted and administered in accordance with the principle of substantive equality as reflected in the following concepts:
- (1) Substantive equality considers systems and structures and the history of colonialism and their effects on Indigenous peoples;
 - (2) Substantive equality seeks to remedy distinctions in law, policy or programs that have the effect of perpetuating arbitrary disadvantage and provides that treatment that is the same for everyone may lead to inequality among certain groups;
 - (3) The rights and distinct needs of a Child with a disability are to be considered in order to promote the child’s participation, to the same extent as other children, in the activities of the child’s family or the Cowichan Tribes;
 - (4) A Child must be able to exercise their rights under this Act, including the right to have their views and preferences considered in decisions that affect the Child, and the Child must be able to do so without discrimination, including discrimination based on sex or gender identity or expression;
 - (5) Cowichan Governing Body must be able to exercise their rights under this Act, including the right to have their views and preferences considered in decisions that affect a Cowichan Tribes child and family member, and they must be able to do so without discrimination.
 - (6) Cowichan Governing Body and Lalum’utul’ Smun’eem are obligated to ensure that its involvement in the provision of child and family services does not perpetuate the historical disadvantages endured by Cowichan Tribes peoples and does not widen the gap between First Nations and the rest of Canadian society rather than narrowing it.
 - (7) In order to promote substantive equality between a Cowichan Tribes Child 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 Cowichan Tribes Child.

Cultural Continuity

- 90.** This Law is to be interpreted and administered in accordance with the principle of cultural continuity reflected in the following concepts:

- (1) Cultural continuity is essential to the well-being of a Child, a Family and the general welfare of the Cowichan Tribes;
- (2) The transmission of the languages, cultures, practices, customs, healing practices, ceremonies, traditions and knowledge of the Cowichan people is integral to cultural continuity;
- (3) A Child's best interests are often promoted when the Child resides with members of the Child's Family, within the Cowichan traditional territory, and the culture of the Cowichan Tribes is taught and respected;
- (4) Child and Family Services provided in relation to a Child are to be provided in a manner that does not contribute to the assimilation of the Cowichan Tribes or to the destruction of the culture of the Cowichan Tribes; and
- (5) The characteristics and challenges of the region in which a Cowichan Tribes Child and Family are located is to be considered.

Effect of Services

91. Child and family services provided in relation to a Cowichan Tribes child are to be provided in a manner that;
 - (1) is consistent with the guiding principles and standards of this Act;
 - (2) considers the child's needs, including with respect to his or her physical, emotional and psychological safety, security and well-being;
 - (3) considers the Cowichan Tribes culture, traditions, norms, values and practices;
 - (4) allows the child to know their identity, family origins, histories and territories; and
 - (5) promotes substantive equality between the child and other children, in accordance with the Guiding Principles of this Law.

Socio-Economic Conditions

92. At times, socio-economic conditions can create circumstances in which a child may be in a circumstance of foreseeable harm or neglect due to the parent's lack of financial resources. Under these circumstances, service providers will assist the parents and work to correct the conditions of neglect through available resources to meet the needs of the child, and will not define the parent's behavior as harmful or neglectful.
93. To the extent that it is consistent with the best interests of the child, a Cowichan Tribes child 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 his or her parent or the care provider.

Priority to Support Services

94. Cowichan Tribes supports a holistic approach to child and family services that creates a “circle-of-care” around the child to ensure their well-being throughout their life in the community.
95. Cowichan Tribes is committed to providing a continuum of services for Cowichan Tribes children and families, including prevention support, early intervention, protection, residential, institutional care and adoption.
96. In the context of providing Child and Family Services in relation to a Child, and to the extent that providing Support Services to support the Child’s Family is consistent with the Best Interests of the Child, the provision of those services is to be given paramount consideration before other services and programming.
97. Early Intervention and community-based alternatives take priority if Preventative Services are not adequate to ensure the Best Interests of the Child.

Priority to Prenatal Services

98. Prenatal services are to be given priority over other services in order to prevent the removal of a Child at birth. Lalum’utul’ Smun’eem will coordinate with other First Nation services providers and non-Indigenous service providers to ensure that culturally appropriate Prenatal Services can be accessed.
99. Cowichan Tribes will not remove a Child at birth, unless it is in the best interests of the Child and all other prevention, early intervention and community-based alternatives have been exhausted or it is deemed they are not in the Best Interests of the Child.

Active Efforts

100. Cowichan Tribes is committed to preserving and restoring the unity of the family and whenever possible, to enabling the family to provide for the care, protection, and mental and physical development a Child.
101. When providing any child and family services, active efforts must be made to ensure the best interests of the Cowichan Tribes child, as defined in this Act, are met.

PLACEMENT OF A CHILD**Priority**

102. The placement of a Child in the context of providing child and family services in relation to the Child, to the extent that it is consistent with the best interests of the Child, is to occur in the following order of priority:
 - (1) with one of the child’s parents;
 - (2) with a member of the child’s extended family or kinship group;

- (3) if it is not possible for the child to be placed in accordance with paragraph (a) or (b) or it is not in the best interests of the child to be so placed, then the child will be placed with a member of some other Cowichan Tribes family residing in the vicinity of the child's usual place of residence; or
- (4) only when it is not possible for the child to be placed in accordance with subsections (1) – (3) or where it would be detrimental to the best interests of the child to be so placed, then the child will be placed with a suitable person approved by the Lalum'utul' Smun'eem Worker after consultation with:
 - (1) members of the child's extended family or kinship group; and
 - (2) such organizations as are appropriate for the child.

Placement with Siblings

103. Taking into consideration the priority placements in section 94 the possibility of placing the child with or near children who have the same parent as the child, or who are otherwise members of the child's family, must be considered in the determination of whether a placement would be consistent with the best interests of the child;

Customs and Traditions

104. The placement of a child must take into account the cultural practices and traditions of the Cowichan Tribes people, such as with regards to ancestral rights and/or customary adoption (acceptance) practices.

Family Unity, Reunification and Ongoing Assessment

105. In the context of providing child and family services in relation to a Child, there must be ongoing assessment taking into consideration the best interests of the child, conducted at least on a bi-monthly basis, of whether it would be appropriate to place the child with

- (1) the Child's parent, if the child does not reside with such a parent; or
- (2) with a member of the child's extended family or kinship group, if the child does not reside with such a person and unless the child resides with a parent.

Attachment and emotional ties

106. In the context of providing child and family services in relation to a Cowichan Tribes child, if the child is not placed with a member of his or her family in accordance with this Act, to the extent that doing so is consistent with the best interests of the child, the child's attachment and emotional ties to each such member of his or her family are to be promoted through active efforts.

107. Active efforts may include a maximum contact order or cultural plan, but are not limited to such legal mechanisms.

NUTS'UMAAT (COLLABORATION)

108. Cowichan Tribes children are the collective responsibility of the Cowichan Tribes community.
109. Every Cowichan Tribes member has a role to play in the life of a Cowichan Tribes child and a responsibility to ensure that Cowichan Tribes children are provided with the opportunity to flourish and thrive, physically, emotionally and psychologically.
110. Collaboration with family is a guiding principle that guides the actions carried out under this Act. This approach will enable Lalum'utul' Smun'eem workers to make assessments and judgments based on a balance of information regarding the best interests of the child.

Accountability to Cowichan Tribes Families

111. 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.
112. This child and family-centered practice will begin at the point of initial report and contact with Lalum'utul' Smun'eem.
113. Lalum'utul' Smun'eem workers will gather information, including the family strengths, from knowledgeable sources who are concerned about child's safety affirming a family-centered practice, and collaborate to help overcome any negative assumptions that may exist about families.
114. When providing services Lalum'utul' Smun'eem Workers will maintain regular contact with the family of a Child, and report on the progress of any intervention actions.

Grandparent Collaboration

115. In accordance with the Guiding Principles, a child's Grandparent plays an important role in the well-being of a Child.
116. At all stages of a child and family services intervention, including (but not limited to) assessment, investigation, proceeding, and placement planning, priority will be given to collaborating with the Child's Grandparent 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 child.

Family Spokesperson Collaboration

117. In accordance with the Guiding Principles and the purpose of the Law, a Family Spokesperson will be consulted to ensure that decision-makers are aware of the specific circumstances of a Child and the Child's family.
118. Lalum'utul' Smun'eem will exercise due diligence to identify and contact the Child's Family Spokesperson, 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 Child and the Child's family, and/or collaboration

regarding intervention services including, but not limited to, any necessary placement provisions.

***Sul’hween* Committee**

- 119.** In accordance with the Guiding Principles and the purpose of the Act, a *Sul’hween* Committee will be formed to help ensure that the decision-making processes are guided by our *snuw’uyulh*.
- 120.** The *Sul’hween* Committee consists of (X) community members, who are enrolled Cowichan Tribes members. The members will be appointed by the Cowichan Tribes Chief and Council by BCR. The Committee will select its chairperson and adopt its own manner of meeting and proceeding to carry out its responsibilities.
- 121.** The *Sul’hween* Committee will provide advice to Lalum’utul’ Smun’eem Workers and consult with Cowichan Tribes families in order to assist in finding the least disruptive support service for families.
- 122.** The *Sul’hween* Committee will review all proposed customary adoptions and make such recommendations as the Committee will deem appropriate.
- 123.** When privy to information that is confidential, 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 Committee will sign the Code of Conduct and abide by its provisions.
- 124.** The chair of the committee will designate a member to serve on the Child Blanketing Committee

Child Blanketing Committee

- 125.** In accordance with the Guiding Principles and the purpose of the Act, a Child Blanketing Committee will be formed to restore the honour to the Child and their respective family, and shield them from further harm.
- 126.** The Child Blanketing Committee consists of representatives from the Cowichan Tribes *Sul’hween* Committee, the Lalum’utul’ Smun’eem Advisory Committee, 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 Child Consultation Team will act as advisory on an as required basis.
- 127.** The Child Blanketing Committee will meet as needed to advise and consult:
- (1) on matters brought before it by members of the team, Lalum’utul’ Smun’eem, or other Cowichan Tribes employees who provide services to children; and
 - (2) with social workers from other jurisdictions who are managing cases of Cowichan Tribes children.

PART FIVE

Support Services

SUPPORT SERVICES

- 128.** Support services that enable children to flourish, thrive and take into consideration the social determinants of health, child 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.
- 129.** 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, e) cultural and language knowledge and skills.
- 130.** Support services may be offered to 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

- 131.** In accordance with this Law, Cowichan Governing Body will provide support services to Cowichan Tribes' children and families by Lalum'utul' Smun'eem, subject to fiscal resources, which may include selected priorities from the following areas, including but not limited to:
- (1) family support including, group homes, parenting programs, play therapy, child and youth counsellors (culturally/internal), sexual violence program, day care and after school care;
 - (2) domestic violence;
 - (3) services for children, including special needs;
 - (4) counseling and healing focussed programming for intergenerational trauma healing
 - (5) mediation;
 - (6) services to assist families overcome poverty;
 - (7) services to assist families improve their housing situation including, a "safe home" model for families in a reunification phase;
 - (8) services to assist the family deal with the illness of a child or a family member;
 - (9) in-home support;
 - (10) respite care;

- (11) services to support children who witness family violence;
- (12) family development activities;
- (13) advocacy to navigate governmental systems;
- (14) youth camps and mentoring programs;
- (15) family conference and suicide prevention conference;
- (16) mental health supports;
- (17) substance abuse treatment and rehabilitation;
- (18) healing circles and a wellness center;
- (19) support for elder’s cultural knowledge keepers;
- (20) services to assist where a child is lost, run away or has been absent from home in circumstances that endanger the child's safety or well-being;
- (21) holistic healing village with wrap around services; and
- (22) LGBTQ2S support services.

Support Services for Youth

132. Cowichan Tribes may establish support services for Youth, including but not limited to:

- (1) safe houses;
- (2) prevention programming;
- (3) educational support and program;
- (4) outreach services; and
- (5) supported living arrangements.

Post-Majority Care (aging out) Support Services

133. Cowichan Governing Body will establish policies to provide post-majority care services through a continuum of supports for Cowichan youth and young adults formerly in care, to assist them with their transition to adulthood upon reaching the age of 19 until 27.

134. Post-majority care services aim to support the safety and well-being of Cowichan youth and young adults in an approach that is culturally appropriate, in their self-identified best interest, and provided on the basis of substantive equality.

135. In accordance with this Law, Cowichan Governing Body will provide for post majority care to support the delivery of wrap around services that promote and support holistic positive outcomes for thriving youth and young adults. Supports that meets the distinct needs of Cowichan youth and 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.

PART SIX

Early Intervention Services

- 136.** Early intervention services will be the initial and primary method for service delivery for Lalum’utul’ Smun’eem Workers when intervention may be needed.
- 137.** Early intervention service measures should be aimed at achieving the optimal development for all Cowichan Tribes children. In circumstances where a Child is deprived of the right to minimal physical, mental, spiritual, moral, psychological and social development standards of safety, health, and nurture, the Lalum’utul’ Smun’eem Worker will intervene in the best interests of the child, to preserve and protect those rights of the child.

WHEN INTERVENTION MAY BE NEEDED

Duty to Report

- 138.** A person who has reasonable grounds to believe that a Child needs protective intervention will immediately report the information on which they base their belief to a Lalum’utul’ Smun’eem Worker, MCFD director, social worker or peace officer.
- 139.** The duty to report applies even if the information on which the belief is:
- (1) confidential, and disclosure of the information is prohibited under another Act; or
 - (2) privileged, except as a result of solicitor-client relationship.
- 140.** No person will knowingly report false information that a child is in need of protective intervention.
- 141.** No action may be brought against a person for reporting the information, unless the person knowingly reports false information.
- 142.** 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

- 143.** On receiving a report, a Lalum’utul’ Smun’eem Worker 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 child needs protective intervention, and whether the matter should include any support or intervention processes.
- 144.** A Lalum’utul’ Smun’eem Worker will be required to conduct a safety assessment whenever there is a report that a child may require protecting intervention in the following circumstances:

- (1) if the child has been, or is likely to be, physically harmed by the child's parent or care provider or by another person and the child's parent or care provider is unwilling or unable to protect the child;
- (2) if the child has been, or is likely to be, sexually abused or exploited, including by encouraging, coercing or enticing to engage in prostitution, by the child's parent or care provider or by another person and if the child's parent or care provider is unwilling or unable to protect the child;
- (3) if the child has been, or is likely to be, physically harmed because of neglect by the child's parent or care provider by depriving the child of adequate food, clothing, shelter or necessary medical care, which is necessary for the child's health, safety, development or well-being, 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;
- (4) if the child 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;
- (5) if the child's parent or care provider is unable or unwilling to care for the child and has not made adequate provision for the child's care;
- (6) if the child's parent is deceased and adequate provision, including legal guardianship has not been made for the child's care;
- (7) if the child has been abandoned or left in any premise or vehicle without adequate provision for supervision or care;
- (8) if the child is in the care, custody or guardianship of another person by agreement and the child's parent is unwilling or unable to resume care when the agreement is no longer in force;
- (9) if the child demonstrates emotional harm including severe anxiety, depression, withdrawal, self-destructive or aggressive behavior and parent's response is not adequate to meet the child's needs caused by the conduct of the parent or care provider; or
- (10) if the child has witnessed significant domestic violence and the child's parent or care provider has failed to take real steps to eliminate the risk of the child witnessing that domestic violence.

Immediate Danger

145. Where a Cowichan Tribes child's health or safety is in immediate danger, the Lalum'utul' Smun'eem Worker may immediately remove the child from the parent and take the child into temporary Cowichan Tribes guardianship.

- 146.** A Lalum’utul’ Smun’eem Worker may, without a court order and without the consent of the parent, enter any premises or vehicle or board any vessel on Cowichan Tribes land for the purpose of removing a child if:
- (1) the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that the child is in the premises or vehicle or on the vessel; and
 - (2) a person denies the Lalum’utul’ Smun’eem Worker access to the child or no one is available to allow access to the child.
- 147.** A Lalum’utul’ Smun’eem Worker may request that a member of the child’s extended family assist the Lalum’utul’ Smun’eem Worker in exercising this authority.
- 148.** A Lalum’utul’ Smun’eem Worker may also request that a police officer accompany and assist the Lalum’utul’ Smun’eem Worker in exercising this authority.
- 149.** A Lalum’utul’ Smun’eem Worker's authority or duty under this Law to remove a child in immediate danger applies whether or not all active efforts to provide Support and Intervention Services have been provided and when no less disruptive measure is adequate to protect the child.

Conducting an Investigation

- 150.** A parent or care provider of a Child will permit the Child to be visited and interviewed in private by a Lalum’utul’ Smun’eem Worker conducting an investigation in accordance with this Part.
- 151.** Where a Lalum’utul’ Smun’eem Worker authorized to conduct an investigation is denied access to a child, and the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that the child may be in need of protective intervention, the Lalum’utul’ Smun’eem Worker may apply to a judge for an order without notice to any person.
- 152.** If the judge is satisfied that the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that the child may need protective intervention, and the Lalum’utul’ Smun’eem Worker has been denied access to the child by a person, the judge may grant one or more of the following orders;
- (1) the person discloses the location of the child;
 - (2) the person allows Lalum’utul’ Smun’eem Worker interview or visually examine the child;
 - (3) the Lalum’utul’ Smun’eem Worker be authorized to enter and remove the child from the place where the child is located and transport them to a place for an interview or medical examination; and
 - (4) a health care provider be authorized to examine the child.
- 153.** A Lalum’utul’ Smun’eem Worker 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.

INTERVENTION OPTIONS

154. After an assessment of a report, or other information, reveals that a Child and family is in need of intervention services, the Lalum’utul’ Smun’eem Worker may facilitate any of the following options.

Least Disruptive Intervention Measures

155. When taking any intervention action, the Lalum’utul’ Smun’eem Worker must make active efforts to find the least disruptive means of assisting the parent, which may include the following;

- (1) offering support services;
- (2) engaging in an Grandparent collaboration process;
- (3) providing notice to and facilitating a family meeting with the Family Spokesperson and extended family;
- (4) a culturally based family arrangement or written agreement;
- (5) collaborating with the *Sul’hween* Committee or the Child Blanketing Committee; and
- (6) working with First Nation Designated Representative.

Culturally-based Voluntary Customary Family Arrangements

156. Culturally-based voluntary customary family arrangements are based on our *snuw’uyulh* and the teaching and customary practice that children may be raised by their grandparents or other family members.

157. Culturally-based voluntary customary family arrangements are done by verbal understandings and commitments.

In-Home Culturally-based Voluntary Customary Family Arrangements

158. An informal voluntary arrangement that is culturally-based with a parent of a child that will provide for the child to remain in the family home.

159. The Lalum’utul’ Smun’eem Worker may work with the parents and extended family, and offer support services to assist the parents in addressing the best interests of the Child or identified risks.

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

160. The Lalum’utul’ Smun’eem Worker may facilitate a culturally-based informal verbal voluntary arrangement with a parent or caregiver of a Child that is temporarily unable to look after the child in the home, except for documents required to provide financial support to the care provider while the child is in the person’s care.

161. Where a Child is to be cared for out of the parent’s or caregiver’s home, the Lalum’utul’ Smun’eem Worker will work with the parents to establish a voluntary arrangement with a person from a Child’s extended family or another person, if the person:

- (1) has a cultural or traditional responsibility towards the child or has established a relationship with the child; and
- (2) is given physical care and control of the child by the child’s parent.

162. Depending on the age and capacity of the child, the Lalum’utul’ Smun’eem Worker must:

- (1) consider the child’s views about the arrangement; and
- (2) explain the effect of the arrangement.

163. Any voluntary arrangement may provide for conditions that are determined by and agreed to between the parent and the Lalum’utul’ Smun’eem Worker.

164. Any voluntary arrangement will follow cultural protocols, including the calling of witnesses and hiring of cultural workers to offer guidance and instruction.

165. The obligation will be with the parents to comply with the voluntary arrangements.

Written Voluntary Care Agreement

166. The parent who has guardianship of a Child, and is temporarily unable to look after the child in the home, may enter into a written voluntary care agreement with a Lalum’utul’ Smun’eem Worker. Under the agreement, the parent may delegate to the Lalum’utul’ Smun’eem worker, or an extended family member, as much of the parent’s authority for the care, custody and guardianship of the child’s person as is required to give effect to the agreement.

167. The Lalum’utul’ Smun’eem Worker may enter into an agreement with a person from a child’s extended family or another person, to provide for the placement of the child, if the person:

- (1) has a cultural or traditional responsibility towards the child or has established a relationship with the child, and
- (2) is given physical care and control of the child by the child’s parent.

168. This agreement may provide for a child’s financial support while the child is in the person’s care.

169. Depending on the age and capacity of the child, the Lalum’utul’ Smun’eem Worker must:

- (1) consider the child’s views about the agreement; and
- (2) explain the effect of the agreement.

170. The agreement must include but is not limited to:

- (1) a description of the plan of care child, including where the child will reside;
- (2) where the Lalum'utul' Smun'eem Worker has guardianship a commitment by the Lalum'utul' Smun'eem Worker to keep the parent informed of child's progress and involving parents and extended family in decisions affecting child; and
- (3) a commitment by the parent to maintain contact with the child, including the details of the contract.

171. The term of the agreement will be as agreed between the parent and caregiver and the Lalum'utul' Smun'eem Worker.

172. Where the parent does not resume care of the child the agreement ends.

PROTECTION SERVICES

Cowichan Tribes Becomes a Temporary Guardian

173. Where all active efforts to provide support and less disruptive intervention services have been provided and no less disruptive measure is adequate to protect the Child and there is clear and convincing evidence that abuse or neglect has occurred, Cowichan Tribes will remove the child from the parent and take the child into temporary non-voluntary Cowichan Tribes guardianship.

174. Protection services is a last resort and will occur only if a child's best interests are at risk and:

- (1) a parent or caregiver declines to participate in the voluntary parts of this Act; or
- (2) the need to act to protect a child requires a protective intervention.

175. When a Lalum'utul' Smun'eem Worker removes a Cowichan Tribes child, the child is placed under temporary Cowichan Tribes guardianship.

Parents to be Notified of Child Removal

176. The Lalum'utul' Smun'eem Worker will make all reasonable efforts to advise, by notice, the parent or caregiver of the removal of the Child and all necessary information regarding next steps.

177. If the Lalum'utul' Smun'eem Worker is unable to contact the parent, notice may be given to a band-designated representative. (And a grandparent collaborator and a family spokesperson?)

178. The notice must, if practicable, be in writing and must include a statement of the reasons for removing the child.

Returning the Child Before Provincial Court Hearing

179. Before a hearing relating to the removal of a Cowichan Tribes child, the Lalum'utul' Smun'eem Worker may return the child to the parent apparently entitled to custody if

- (1) the Lalum’utul’ Smun’eem Worker makes in agreement with the parent(s) that the Worker considers adequate to protect the child;
- (2) the Lalum’utul’ Smun’eem Worker considers the circumstances have changed or has received information so that the child no longer needs protection; or
- (3) a less disruptive means of protecting the child becomes available, including recommendations from the Grandparent, *Sul’hween* Committee or the Child Blanketing Committee.

COWICHAN TRIBES’ ADJUDICATION AND DISPUTE RESOLUTION MECHANISMS

180. Cowichan Tribes will exercise their jurisdiction over the adjudication and dispute resolution mechanisms in a phased approach.

PHASE ONE

BC Provincial Court

- 181.** The BC Provincial Court will have jurisdiction to hear a matter arising under this law.
- 182.** Cowichan Tribes will continue to utilize the BC Provincial Court to resolve any disputes relating to the removal of a Cowichan Tribes child pursuant to this law.
- 183.** Any court proceeding will be as informal as the judge permits and will be civil in nature.
- 184.** The court may, if in the best interests of a child, exclude the child from the courtroom.
- 185.** The court may admit any hearsay evidence of the child it considers reliable and give any other direction it considers just in the receipt of the child’s evidence.
- 186.** The court may, before making an order that a child to be placed in or returned to a person other than a Lalum’utul’ Smun’eem Worker, consider the person’s past conduct towards the child 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.
- 187.** 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.
- 188.** The court may make an order, including a no contact protective order, without a person or party against whom the order is made having been service notice of the application.

***Sul’hween* Peace Giving Advisory Body (Harmony Restoring)**

- 189.** Cowichan Governing Body will establish by BCR a *Sul’hween* Peace Giving Advisory Body (SPGA).
- 190.** The mission of the SPGA is to assist Cowichan Tribes, in a manner that recognizes the self-determination, *snuw’uyulh*, culture, traditions and customary practices of Cowichan Tribes in the development of their legal orders that will provide fair, equitable and uniform justice

for all who fall within their jurisdiction. In fulfilling this mission, the SPGT promotes a self-sufficient Cowichan community and strengthens self-determination.

191. The SPGA will seek the best means to encourage communication among the participants in each particular case. The SPGA will rely on Cowichan culture and customary practices and the wisdom and experience of Cowichan elders.

- (1) In doing so, it will address those in conflict as whole persons, in order to find the root causes of inappropriate or irresponsible behavior.
- (2) It focuses on restoration of the family and helping Children to thrive in the community.
- (3) Ultimately, the SPGA seeks to attain peace through healing.

192. Cowichan Tribes will utilize the SPGA in resolving disputes involving Cowichan Tribes children who have been removed from their parent or caregiver pursuant to this law. In doing so, the SPGT will work with the provincial court judge and serve as advisors in resolving matters brought before the court.

Consent Order

193. At any time during a proceeding, with the written consent of the Lalum'utul' Smun'eem Worker, the Child, if twelve (12) years of age and over, and each parent of the child or caregiver, the court may make any order for the custody or supervision of the child.

Non-Voluntary Protection Orders

194. No Contact Protective Order

- (1) If a Lalum'utul' Smun'eem Worker has reasonable grounds to believe that contact between a child and another person would cause the child to need protective intervention, the Lalum'utul' Smun'eem Worker may apply to the Court for a no contact protective order.
- (2) At least two days before the date set for hearing the application, the Lalum'utul' Smun'eem Worker will serve notice of the time, date and place of the hearing on:
 - (1) the person against whom the order is sought;
 - (2) the child, if 12 years of age or over;
 - (3) the child's parents; and
 - (4) if the child is a member of another First Nation, the child's First Nation.
- (3) If the Court is satisfied that there are reasonable grounds to believe that contact between the child and the person named in the application would cause the child to need protective intervention, the Court may make one or more of the following orders;

- (1) 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 child or from entering any place where the child is located;
- (2) (b) if the court believes that the person may not comply with a no contact order, require that the person
 - (i) enter into a recognizance, with or without sureties, in an amount the court considers appropriate, or
 - (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

195. Supervision Order

- (1) A Lalum’utul’ Smun’eem Worker may apply to the Provincial Court for an order that the Lalum’utul’ Smun’eem Worker supervise a Cowichan Tribes child's care if the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that:
 - (1) the Cowichan Tribes child needs protection;
 - (2) a supervision order would be adequate to protect the Cowichan Tribes child; and
 - (3) notice of the time, date and place of the hearing related to an application for a supervision order must be served in accordance with this Act.
- (2) No later than (X) days after the date of applying for a supervision order, the Lalum’utul’ Smun’eem Worker must attend for a hearing unless the Provincial Court is notified that the Lalum’utul’ Smun’eem worker does not intend to proceed with the application.
- (3) Notice must be served in the form of a written report and must inform:
 - (1) each parent, if not already served;
 - (2) the applicable Aboriginal organization prescribed in the British Columbia regulations for the purpose of this notice, if the child is an aboriginal child, other than a Cowichan Tribes child or the treaty First Nation, if the child is a treaty First Nation child,

of the date, time and place of the hearing.

If Supervision Order No Longer Protects the Cowichan Tribes Child

196. The Lalum’utul’ Smun’eem Worker will, without further order, remove where there is immediate danger/ or provide other forms of intervention a Cowichan Tribes child who is the subject of a supervision order if

- (1) the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that the order no longer protects the child; or

- (2) the Lalum’utul’ Smun’eem Worker has reasonable grounds to believe that a person has not complied with a term or condition of the order and the worker is required by that order to remove the child if the person does not comply with that term or condition.

Protection Hearing and Orders

197. At an initial presentation hearing relating to the removal of a child, the Lalum’utul’ Smun’eem Worker must present to the court a written report that includes:

- (1) the circumstances that caused the Lalum’utul’ Smun’eem Worker to remove the child;
- (2) an interim plan of care for the child, including the steps to be taken to preserve the child's Aboriginal identity; and
- (3) information about any less disruptive measures considered / taken by the Lalum’utul’ Smun’eem Worker before removing the child.

Arranging a Subsequent Hearing

198. A subsequent hearing may be scheduled at the conclusion of an initial presentation hearing, or the earliest possible date, for a hearing to determine if the child needs protection, or confirm any date previously set for the protection hearing.

Notice of Protection Hearing

199. At least (X) days before the date set for a protection hearing, notice of the time, date and place of the hearing must be served as follows:

- (1) on the Cowichan Tribes child, if twelve years of age or over;
- (2) on each parent;
- (3) if the child is registered or entitled to be registered as a member of an Indian band, on the designated representative of the band; and
- (4) if the child is a treaty First Nation child, on a designated representative of the treaty First Nation.

200. The notice must specify the orders the Lalum’utul’ Smun’eem Worker intends to request and include a copy of any plan of care the Lalum’utul’ Smun’eem Worker 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

201. If the following persons appear at the commencement of the protection hearing, they are entitled to be parties at the hearing:

- (1) each parent of the child;

- (2) the Lalum'utul' Smun'eem Worker;
- (3) the provincial worker;
- (4) if the child is an Aboriginal child, the designated representative of the Indian band or Aboriginal community who was served with notice of the hearing;
- (5) if the child is a treaty First Nation child, the designated representative of the treaty First Nation who was served with notice of the hearing; and
- (6) a person who has an interim order for custody of the child.

Protection Hearing

202. At a protection hearing the court must determine whether the child needs protection.

203. If the court finds that the child does not need protection, it must

- (1) if the child was removed, order the Lalum'utul' Smun'eem Worker to return the child as soon as possible to the parent(s) apparently entitled to custody unless the child has already been returned; and
- (2) terminate any interim supervision order.

204. If the court finds that the child needs protection, it must

- (1) consider the plan of care presented by the Lalum'utul' Smun'eem Worker; and
- (2) hear any evidence the court considers necessary to help it determine which order should be made.

Orders Made at Protection Hearing

205. If the court finds that the child needs protection, it must make one of the following orders in the child's best interest:

- (1) that the child be returned to or remain in the custody of the parent apparently entitled to custody and be under the worker supervision under a temporary order;
- (2) that the child 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 Lalum'utul' Smun'eem Worker supervision under a temporary order;
- (3) that the child remain or be placed in the care, custody and guardianship of Cowichan Tribes under a temporary order; or
- (4) that the child be placed in the ongoing custody of the Cowichan Tribes.

206. Where Cowichan Tribes has custody of a child under an interim order or temporary custody order has the following rights and responsibilities unless they are limited by the court

- (1) to consent to health care for the child;

- (2) to make necessary decisions about the child's education and spiritual upbringing;
- (3) to exercise any other rights and to carry out any other responsibilities of a personal guardian of the child, except the right to consent to the child's adoption.

Access Orders

207. At the time an order or after an order is made the parent who had custody when the child was removed may apply to the court for access to the child.
208. The provisions regarding notice and parties to a protection hearing will apply to any application for access.

Extension of Court Orders

209. If the circumstances that caused the child to need protection are likely to improve within a reasonable time, the Lalum'utul' Smun'eem Worker may, before the order expires, apply to the court for an extension of a consent, supervision order or a temporary custody order.

Ongoing Custody Hearings

210. The court may order that the Cowichan Tribes child be placed in the ongoing custody of Cowichan Tribes if:
 - (1) the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found;
 - (2) the parent(s) is unable or unwilling to resume custody of the child;
 - (3) no other family members are able or willing to assume custody of the child; or
 - (4) the nature and extent of the harm the child has suffered or the likelihood that the child will suffer harm is such that there is little prospect that it would be in the child's best interest to be returned to the parent.

Effect of a Temporary Order

211. Where Cowichan Tribes has temporary care, custody and guardianship under court order it has the following rights and responsibilities unless they are limited by the court:
 - (1) to consent to health care for the child;
 - (2) to make necessary decisions about the child's education and religious upbringing;
 - (3) to exercise any other rights and to carry out any other responsibilities of a personal guardian of the child, except the right to consent to the child's adoption.

Ongoing Custody Order

212. Termination of parental rights over a child is a serious matter that will only be taken after all remedies to maintain the unity of the family has been exhausted.

- 213.** Termination of parental rights will not affect a Child’s enrollment, or eligibility for enrollment under the Indian Act, nor affect a Child’s rights of inheritance from his or her natural parent.
- 214.** The Lalum’utul’ Smun’eem Worker may apply for an ongoing custody order when the Lalum’utul’ Smun’eem Worker reasonably believes that the conduct or condition of the parent is such as to render him or her unable to care for the Cowichan Tribes child and that such conduct or condition is unlikely to change.
- 215.** In applying for an ongoing custody order the worker will consider but is not limited to the following:
- (1) abuse, neglect or abandonment of the minor child or children;
 - (2) failure to maintain regular contact with the child under a plan to reunite the child and parent(s);
 - (3) the parent(s) is unwilling or unable to resume custody of the child;
 - (4) the identity or location of a parent of the child has not been found after a diligent search and is not likely to be found; and
 - (5) the worker determines that it is best interest of the child.

Effect of an Ongoing Custody Order

- 216.** When an order is made placing a child in the ongoing custody and guardianship of Cowichan Tribes, Cowichan Tribes becomes the sole guardian of the child and may consent to the child's adoption.
- 217.** Cowichan Tribes adoption customs and practices are recognized and affirmed by this Law.
- 218.** Cowichan Tribes adoption customs and practices will prevail over the adoption laws and processes of any other government or any other law.
- 219.** Cowichan Tribes does not recognize termination of parental rights within its jurisdiction, as it is not culturally appropriate. Therefore, although attaining permanence for the Cowichan Tribes child, the parent and the child's natural relatives will be granted visitation rights unless deemed to not be in the best interest of the child by the court.

Enforcement of Custody Orders

- 220.** If a Lalum’utul’ Smun’eem Worker has care of a child under this Act, or a Lalum’utul’ Smun’eem Worker or another person has custody of a child under an order made and enforceable under this Act, and the Lalum’utul’ Smun’eem Worker or the other person is denied care or custody, as the case may be, a court, on application, may order that a police officer take charge of the child and take the child to the director or other person who is entitled to the care or custody of the child under this Law.
- 221.** A person must not prevent a police officer from enforcing an order made under this Law.

Appeal to Supreme Court

- 222.** A party may appeal to the Supreme Court from a decision or order of the Provincial Court made under this Act.
- 223.** 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.
- 224.** An appeal is brought by;
- (1) filing a notice of appeal in a registry of the Supreme Court, and
 - (2) serving a copy of the notice of appeal on
 - (1) the parties to the proceeding in which the order of the Provincial Court was made, and
 - (2) the Public Guardian and Trustee, if the child's property guardian.
- 225.** The Supreme Court Civil Rules apply to an appeal under this Part.
- 226.** On application the Supreme Court may suspend the order under appeal for the period and subject to the conditions it thinks appropriate.
- 227.** If the order under appeal is suspended, the Supreme Court may continue or cancel the suspension.
- 228.** After hearing the appeal, the Supreme Court may do one or more of the following:
- (1) confirm the order of the Provincial Court;
 - (2) set aside the order of the Provincial Court;
 - (3) make any order that the Provincial Court could have made;
 - (4) direct the Provincial Court to conduct a new hearing.
- 229.** On application, the Supreme Court may extend the time limit for bringing an appeal.

PHASE TWO

- 230.** Cowichan Tribes will develop an alternative model to provincial court to act as the adjudication and dispute resolution mechanism in relation to Cowichan Tribes child and family service matters within two years.
- 231.** The alternative model will be subject to the amendment provisions of this Law.
- 232.** Once Cowichan Tribes implements the alternative adjudication and dispute resolution mechanism the Provincial Court will no longer have jurisdiction to hear a matter under this law.

233. An orderly transition from provincial court, including court orders, to Cowichan Tribes model will be developed prior to Cowichan Tribes adjudication and dispute resolution mechanism going into effect.

PART SEVEN

General Provisions

LIABILITY

234. No person is personally liable for anything done or omitted in good faith in the exercise or performance or intended exercise or performance of

- (1) a power, duty or functions under this Act; or
- (2) a power, duty or function on behalf of or under the direction of a person on whom the power, duty or function is conferred under this Act.

235. Cowichan Tribes is not liable for core policy decisions in negligence with to this Law.

236. The *Negligence Act*, RSBC 1979, c 298, applies to all findings of negligence arising from this law.

ROLE OF THE PUBLIC GUARDIAN AND TRUSTEE

237. Cowichan Governing Body 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

238. The *Infants Act*, RSBC 1996, c 223, will apply to this Law except section 51 (1) and (2) which will not apply.

239. If a child has no guardian or if the guardian appointed is dead, refuses or is incompetent at law to act,

- (1) Cowichan Tribes will be the personal guardian of the child,
- (2) 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 child, or
- (3) subsections (1) and (2) both apply, as circumstances require, unless and until a tribunal of competent jurisdiction otherwise orders.

OFFENCE ACT

240. 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 and will be subject to the *Offence Act*, RSBC 1996, c 338.

CONSTITUTIONAL CHALLENGE NOTICE

241. If in a cause, matter, or other proceeding

- (1) the constitutional validity or constitutional applicability of this law is challenged, or
- (2) an application is made for a constitutional remedy

the 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 the Cowichan Tribes and the Attorney General of Canada and the Attorney General of British Columbia in accordance with the *Constitutional Question Act*, RSBC 1996, c 68.

242. The BC *Constitutional Question Act* will apply to any such proceedings.

ENACTMENT AND RATIFICATION

243. 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.

244. A Verifier is required in a Ratification Vote.

245. 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.

246. An official copy of this law will be maintained at the Cowichan Tribes Administration office and will be available to the public to review.

247. A copy of this law and any subsequent amendments will be delivered to the appropriate federal and provincial ministers.

TRANSITION OF EXISTING FILES

248. Upon the enactment of this Law, but subject to the terms of any applicable Coordination Agreement:

- (1) at the written request of the Executive Director, a province shall immediately transfer the file of a Child in the custody or guardianship of the province to the Executive Director
- (2) the Executive Director shall be deemed to have assumed guardianship of a Child in the custody or guardianship of a province when the Child's file has been transferred from the province to the Executive Director, or 30 days have elapsed since the request for the file was received by the province, whichever is sooner.
- (3) until the file has been so transferred, the current status of a Child in the custody or guardianship of the province continues, but

- (4) the Executive Director must be consulted before any decisions are made with respect to the Child.

249. Any decision made without consultation with the Executive Director is deemed to be void:

REVIEW AND AMENDMENT OF THE LAW

Process of Amendment and Review

250. This Law may be amended by a process established by the Cowichan Governing Body.

251. Any amendment to this Law will be subject to a ratification vote.

252. Every five years after the day on which this Law comes into force, Cowichan Tribes must undertake a review of the provisions, operations, and effects of this Act.

Report

253. Lalum’utul’ Smun’eem must prepare a report on the five (5) year review that sets out their analysis, conclusions and recommendations.

Tabling of Report

254. The Cowichan Governing Body must cause the report to be tabled at the next Annual General Meeting after the day on which the report was completed.